AUTO CR - LOG SUMMARY #1070531

TYPE: CR

Incident Finding / Overall Case Finding

Description of Incident	Finding	Entered By	Entered Date
	(None Entered)		

Reporting Party Information

	Role	Name	Star No.	Emp No.	UOA / UOD	Position	Sex	Race	Address	Phone
CPD Employee	Reporting Party Third Party	KLIMAS, ROBERT J		[redacted]	121 /	COMMANDER	M	WHI		

Incident Information

Incident From Date/Time	Address of Incident	Beat	Dist. Of Occurrence	Location Code	Location Description

Accused Members

	Role	Name	Star No.	Emp No.	UOA / UOD	Position	Status	Initial / Intake Allegation
CPD Employee	Accused	ESPOSITO, FRANK		[redacted]	610 /	PO AS DETECTIVE	OFF Duty	It is reported that the accused made false statements to then Superintendent of Police Phil Cline under [redacted]

Other Involved Parties

	Role	Name	Star No.	Emp No.	UOA / UOD	Position	Sex	Race	Address	Phone

Involved Party Associations

Role	Rep. Party Name	Related Person	Relationship

Incident Details

CR Required?		**Manner Incident Received?**	PAX
Confidential?		**Biased Language?**	N
Extraordinary Occurrence?	N	**Bias Based Profiling?**	N
Police Shooting (U)?	N	**Alcohol Related?**	N
Non Disciplinary Intervention:	N	**Pursuit Related?**	N
Initial Assignment:	IAD	**Violence in Workplace?**	N
Notify IAD Immediately?	N	**Domestic Violence?**	N
EEO Complaint No.:			
Civil Suit No.:		**Civil Suit Settled Date:**	
Notify Chief Administator?	N	**Notify Chief?**	
Notify Coordinator?		**Notification Does Not Apply?**	Y
Notification Other?	N		
Notification Comments:			

Incident Category List

Incident Category	Primary?	Initial?
10T - GROUP 10 - OPERATION/PERSONNEL VIOLATIONS (ON DUTY) REPORTS	Y	Y

Investigator History

Investigator	Type	Assigned Team	Assigned Date	Scheduled End Date	Investigation End Date	No. of Days
BARZ, MICHAEL	Primary	CONFIDENTIAL INVESTIGATION SECTION	08-AUG-2014	05-JAN-2015	01-MAY-2017	997

Investigator History

Investigator	Type	Assigned Team	Assigned Date	Scheduled End Date	Investigation End Date	No. of Days
WILLIAMS, TENICIA	Primary	CONFIDENTIAL INVESTIGATION SECTION	01-MAY-2017	22-MAR-2019		807
DEENIHAN, BRENDAN	Supervisor	CONFIDENTIAL INVESTIGATION SECTION	15-OCT-2015	14-NOV-2015	28-OCT-2015	
BLAUL, CHRISTINE	Supervisor	CONFIDENTIAL INVESTIGATION SECTION	28-OCT-2015	27-NOV-2015	11-APR-2018	
TORRES JR, WILFREDO	Supervisor	CONFIDENTIAL INVESTIGATION SECTION	11-APR-2018	11-MAY-2018		
MELEAN, FREDERICK	Supervisor	CONFIDENTIAL INVESTIGATION SECTION	08-AUG-2014	07-SEP-2014	15-OCT-2015	

Extension History

Name	Previous Scheduled End Date	Extended Scheduled End Date	Date Certified Letter Sent	Reason Selected	Explination	Extension Report Date	Approved By	Approved Date	Approval Comments
WILLIAMS, TENICIA	20-FEB-2019	22-MAR-2019		OTHER (DESCRIBE)	typing summary	07-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	21-JAN-2019	20-FEB-2019		OTHER (DESCRIBE)	request disciplinary history	07-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	22-DEC-2018	21-JAN-2019		OTHER (DESCRIBE)	request complimentary history	07-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	22-DEC-2018	21-JAN-2019		OTHER (DESCRIBE)	to/from report with accused	07-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	22-NOV-2018	22-DEC-2018		OTHER (DESCRIBE)	reviewing reports	07-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	23-OCT-2018	22-NOV-2018		OTHER (DESCRIBE)	reviewing reports	07-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	23-SEP-2018	23-OCT-2018		OTHER (DESCRIBE)	reviewing city Ethic rules concerning the revolving door post city employment	07-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	24-AUG-2018	23-SEP-2018		OTHER (DESCRIBE)	reviewing retirement reports	07-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	25-JUL-2018	24-AUG-2018		OTHER (DESCRIBE)	reviewing reports	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	25-JUN-2018	25-JUL-2018		OTHER (DESCRIBE)	requesting documents	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	26-MAY-2018	25-JUN-2018		OTHER (DESCRIBE)	reviewing reports	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	26-APR-2018	26-MAY-2018		OTHER (DESCRIBE)	reviewing reports	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	27-MAR-2018	26-APR-2018	18-SEP-2018	OTHER (DESCRIBE)	certified letter sent	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	25-FEB-2018	27-MAR-2018		OTHER (DESCRIBE)	reviewing documents	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	26-JAN-2018	25-FEB-2018		OTHER (DESCRIBE)	reviewing documents	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	27-DEC-2017	26-JAN-2018		OTHER (DESCRIBE)	reviewing documents	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	27-NOV-2017	27-DEC-2017		OTHER (DESCRIBE)	reviewing received documents	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	28-OCT-2017	27-NOV-2017		OTHER (DESCRIBE)	reviewing reports	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	28-SEP-2017	28-OCT-2017		OTHER (DESCRIBE)	reviewing reports	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	29-AUG-2017	28-SEP-2017		OTHER (DESCRIBE)	requesting documents	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	30-JUL-2017	29-AUG-2017		OTHER (DESCRIBE)	requesting retirement dates	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	30-JUN-2017	30-JUL-2017		OTHER (DESCRIBE)	Reviewing reports	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
WILLIAMS, TENICIA	31-MAY-2017	30-JUN-2017		OTHER (DESCRIBE)	reviewing reports	05-JUN-2019	TORRES JR, WILFREDO	10-JUN-2019	OK
BARZ, MICHAEL	06-DEC-2014	05-JAN-2015		OTHER (DESCRIBE)	A review of evidence to be completed.	11-DEC-2014	MELEAN, FREDERICK	15-DEC-2014	
BARZ, MICHAEL	06-NOV-2014	06-DEC-2014		OTHER (DESCRIBE)	A review of evidence to be completed.	11-DEC-2014	MELEAN, FREDERICK	15-DEC-2014	
BARZ, MICHAEL	07-OCT-2014	06-NOV-2014		OTHER (DESCRIBE)	A review of evidence to be completed.	11-DEC-2014	MELEAN, FREDERICK	15-DEC-2014	
BARZ, MICHAEL	07-SEP-2014	07-OCT-2014		OTHER (DESCRIBE)	A review of evidence being done.	26-SEP-2014	MELEAN, FREDERICK	30-SEP-2014	

Current Allegations

Accused Name	Seq. No.	Allegation	Category	Subcategory	Finding

Situations (Allegation Details)

Accused Name	Alleg. No.	Situation	Victim/Offender Armed?	Weapon Types	Weapon Other	Weapon Recovered?	Deceased?

Status History

Resulting Status	Status Date/Time	Created By	Position	UOA / UOD	Comments
PENDING INVESTIGATION	01-MAY-2017 11:30	PICKETT, SHAWN	SERGEANT OF POLICE	121 /	Primary investigator promoted.
PENDING INVESTIGATION	08-AUG-2014 08:22	PIONKE, JOSEPH	SERGEANT OF POLICE	121 /	
PENDING ASSIGN INVESTIGATOR	07-AUG-2014 11:26	CLARK, SUSAN	LIEUTENANT OF POLICE	121 /	 Type Changed from INFO to CR on 07-AUG-2014 11:26 by CLARK, SUSAN
PENDING APPROVE TEAM	05-AUG-2014 03:26	WATSON, JOHN	POLICE OFFICER	121 /	
PENDING ASSIGN TEAM	23-JUL-2014 11:07	ROBERTS, GEORGE	SUPERVISING INVESTIGATOR	113 /	
PENDING SUPERVISOR REVIEW	23-JUL-2014 11:06	TOUSANT, LISA	INTAKE AIDE	113 /	
PRELIMINARY	23-JUL-2014 11:03	ROBERTS, GEORGE	SUPERVISING INVESTIGATOR	113 /	
PRELIMINARY	23-JUL-2014 10:58	TOUSANT, LISA	INTAKE AIDE	113 /	

Attachments

No.	Type	Related Person	No. of Pages	Narrative	Original in File	Entered By	Entered Date/Time	Status	Approve Content	Approve Inclusion
1	FACE SHEET					TOUSANT, LISA	23-JUL-2014 10:58			
1	INVESTIGATION					BARZ, MICHAEL	08-AUG-2014 11:14			
2	CONFLICT CERTIFICATION					BARZ, MICHAEL	08-AUG-2014 11:14			
3	CONFLICT CERTIFICATION					WILLIAMS, TENICIA	24-AUG-2018 02:22			
4	DOCUMENTS - INTAKE INCIDENT		39	Authorization for Investigation	N	WATSON, JOHN	05-AUG-2014 03:25	APPROVED		

Review Incident

Review Type	Accused/Involved Member Name	Result Type	Reviewed By	Position	Unit	Review Date	Remarks

Review Accused

Review Type	Accused/Involved Member Name	Result Type	Reviewed By	Position	Unit	Review Date	Remarks

Accused Finding History

Accused	Allegation	Reviewed By	Reviewed Date/Time	CCR?	Concur?	Finding	Finding Comments

Accused Penalty History

Accused	Reviewed By	Reviewed Date/Time	CCR?	Concur?	Penalty	Penalty Comments

Findings

Findings

Accused Name	Allegations	Category	Concur?	Findings	Comments

FACE SHEET (Notification Date: 23-JUL-2014) - LOG #1070531

TYPE: CR

Reporting Party Information

	Role	Name	Star No.	Emp No.	UOA / UOD	Position	Sex	Race	Address	Phone
CPD Employee	Reporting Party Third Party	KLIMAS, ROBERT J		[redacted]	121 /	COMMANDER	M	WHI		

Incident Information

Incident From Date/Time	Address of Incident	Beat	Dist. Of Occurrence	Location Code	Location Description

Accused Members

	Role	Name	Star No.	Emp No.	UOA / UOD	Position	Status	Initial / Intake Allegation
CPD Employee	Accused	ESPOSITO, FRANK		[redacted]	610 /	PO AS DETECTIVE	OFF Duty	It is reported that the accused made false statements to then Superintendent of Police Phil Cline under [redacted]

Incident Details

CR Required?		**Manner Incident Received?**	PAX
Confidential?		**Biased Language?**	N
Extraordinary Occurrence?	N	**Bias Based Profiling?**	N
Police Shooting (U)?	N		
Motor Vehicle (V)?		**Alcohol Related?**	N
Non Disciplinary Intervention:	N	**Pursuit Related?**	N
Initial Assignment:	IAD	**Violence in Workplace?**	N
Notify IAD Immediately?	N	**Domestic Violence?**	N
EEO Complaint No.:			
Civil Suit No.:		**Notify Chief?**	
Notify Chief Administator?	N	**Notification Does Not Apply?**	Y
Notify Coordinator?			
Notification Other?	N		

Initial Incident Category List

Initial Incident Category	Primary?
10T - GROUP 10 - OPERATION/PERSONNEL VIOLATIONS (ON DUTY) REPORTS	Y

Assignment History

Assigned To	Assigned Team	Investigator	Assignment Date/Time	Assigned By	Reason
IAD	CONFIDENTIAL INVESTIGATION SECTION	TORRES JR, WILFREDO (SUPERVISOR)	11-APR-2018 09:55	PICKETT, SHAWN	
IAD	CONFIDENTIAL INVESTIGATION SECTION	WILLIAMS, TENICIA (PRIMARY INV)	01-MAY-2017 11:30	PICKETT, SHAWN	
IAD	CONFIDENTIAL INVESTIGATION SECTION	BLAUL, CHRISTINE (SUPERVISOR)	28-OCT-2015 14:11	SOLIS, MARCELLA	
IAD	CONFIDENTIAL INVESTIGATION SECTION	DEENIHAN, BRENDAN (SUPERVISOR)	15-OCT-2015 10:30	MELEAN, FREDERICK	
IAD	CONFIDENTIAL INVESTIGATION SECTION	MELEAN, FREDERICK (SUPERVISOR)	08-AUG-2014 08:22	PIONKE, JOSEPH	
IAD	CONFIDENTIAL INVESTIGATION SECTION	BARZ, MICHAEL (PRIMARY INV)	08-AUG-2014 08:22	PIONKE, JOSEPH	
IAD	CONFIDENTIAL INVESTIGATION SECTION	-	05-AUG-2014 15:26	WATSON, JOHN	
IAD	INTERNAL AFFAIRS DIVISION	-	23-JUL-2014 10:58	TOUSANT, LISA	

Status History

Resulting Status	Status Date/Time	Created By	Position	UOA / UOD	Comments
PENDING INVESTIGATION	01-MAY-2017 11:30	PICKETT, SHAWN	SERGEANT OF POLICE	121 /	Primary investigator promoted.
PENDING INVESTIGATION	08-AUG-2014 08:22	PIONKE, JOSEPH	SERGEANT OF POLICE	121 /	

Status History

Resulting Status	Status Date/Time	Created By	Position	UOA / UOD	Comments
PENDING ASSIGN INVESTIGATOR	07-AUG-2014 11:26	CLARK, SUSAN	LIEUTENANT OF POLICE	121 /	 Type Changed from INFO to CR on 07-AUG-2014 11:26 by CLARK, SUSAN
PENDING APPROVE TEAM	05-AUG-2014 03:26	WATSON, JOHN	POLICE OFFICER	121 /	
PENDING ASSIGN TEAM	23-JUL-2014 11:07	ROBERTS, GEORGE	SUPERVISING INVESTIGATOR	113 /	
PENDING SUPERVISOR REVIEW	23-JUL-2014 11:06	TOUSANT, LISA	INTAKE AIDE	113 /	
PRELIMINARY	23-JUL-2014 11:03	ROBERTS, GEORGE	SUPERVISING INVESTIGATOR	113 /	
PRELIMINARY	23-JUL-2014 10:58	TOUSANT, LISA	INTAKE AIDE	113 /	

BUREAU OF INTERNAL AFFAIRS **23 July 2014**

TO: Garry F. McCarthy
Superintendent

FROM: Juan J. Rivera
Chief
Bureau of Internal Affairs

SUBJECT: **Authorization for Investigation - Pursuant to Fraternal Order of Police Contract Article 6.1 D**

I am seeking approval to investigate CL #1070531. The complainant alleges that the accused, Detective Frank S. Esposito # 21172 made false statements to then Superintendent Phillip J. Cline in relation to CR [redacted] over 5 years ago.

In light of the seriousness of the charges, I am requesting authorization to initiate a complaint log investigation in this matter. As the allegations are more than five years old, the investigation may not proceed unless authorized by the Superintendent.

Juan J. Rivera
Chief
Bureau of Internal Affairs

Approved:

Garry F. McCarthy
Superintendent

JR/rp

BUREAU OF INTERNAL AFFAIRS 23 July 2014

TO: Juan J. Rivera
Chief
Bureau of Internal Affairs

FROM: Sergeant Richard Pakula
Bureau of Internal Affairs

SUBJECT: **Initiation Complaint Register # 1070531**

Accused: Detective Frank S. Esposito # 21172
Empl # [redacted] U.O.A. 610

Date: 31 August 2006

Complainant: Commander Robert Klimas
Bureau of Internal Affairs

Summary The complainant alleges that the accused made false statements to then Superintendent Phillip J. Cline relating to CR #[redacted]

Reporting Sergeant contacted the Independent Police Review Authority (Tousant) at 1058 hours and obtained Complaint Log #1070531.

Sgt. Richard Pakula 968
Sergeant Richard Pakula # 968
Administration Section
Bureau of Internal Affairs

OFFICE OF INSPECTOR GENERAL
City of Chicago

Joseph M. Ferguson
Inspector General

740 N. Sedgwick Street, Suite 200
Chicago, Illinois 60654
Telephone: (773) 478-7799
Fax: (773) 478-3949

CONFIDENTIAL

VIA EMAIL
July 18, 2014

Superintendent Garry F. McCarthy
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653

Re: Det. Frank Esposito (Star No. 21172)

Dear Superintendent McCarthy:

The City of Chicago Office of Inspector General (the "OIG") is referring the following information to the Chicago Police Department ("CPD" or the "Department") for your inquiry and action, if appropriate. OIG is not conducting an investigation into this matter.

OIG has reviewed information suggesting that CPD Det. Frank Esposito may be an appropriate subject for discipline at this time for one or more of four different reasons, further may warrant consideration of non-disciplinary management action. As your office is aware, Esposito and his company, [redacted] ("[redacted]") were the subjects of inquiry and investigation by the City of Chicago Department of Consumer Services ("DCS") (now a part of the Department of Business Affairs and Consumer Protection) for the way in which Esposito ran [redacted]. In short, [redacted], through Esposito, made false statements to DCS and the public about its insurance coverage (it had none), and in furtherance of that scheme, submitted forged insurance certificates to the City.

The City became aware of to [redacted] scheme when an [redacted] customer, whose car was stolen and trashed while in [redacted] care, sought compensation from the purported insurance carrier. That triggered an investigation, which eventually led to hearings in the City of Chicago Department of Administrative Hearings ("DOAH"). DOAH found Esposito and [redacted] liable for various offenses (including deceptive and fraudulent practices); DOAH imposed fines in excess of $100,000.

Those findings of liability were the subject of an unsuccessful appeal to the Circuit Court of Cook County (the "CCCC"), and the fines were the subject of unsuccessful appeals before the CCCC and the Appellate Court of Illinois, First Division (the "Appellate Court"). At the end of all the litigation, Esposito owed the City of Chicago (the "City") hundreds of thousands of dollars and was personally liable for the fines [redacted] owed the City. Esposito also was

personally excoriated, by name and in a published opinion, when the Appellate Court took issue with the way in which Esposito "personally instigated and actively participated in the fraudulent acts perpetuated upon the City and the general public." [redacted]*., and Frank Esposito v.* [redacted] (attached hereto as **Exhibit A**).

OIG understands that much of information concerning the underlying unlawful conduct was already known to CPD. Indeed, CPD's Bureau of Internal Affairs (hereinafter "IAD") conducted an investigation into Esposito, his conduct as related to the [redacted] business, his using his CPD position to harass a dissatisfied [redacted] customer, and his statements found by IAD to constitute lies during two interviews. Former Superintendent Phillip Cline rejected IAD's initial recommendation—separation—and reduced it to a 30-day suspension. After more than two years, notwithstanding the recommendations of multiple IAD officials, and after receiving a lengthy memorandum from Esposito in support of his request for Superintendent review, Supt. Cline decided that none of the allegations against Esposito were sustained. Esposito served no suspension, and IAD closed the matter.

OIG hereby presents additional information for your review and consideration as it pertains to the conduct at issue. There are four possible ways in which this information may lead CPD to conclude that disciplinary inquiry action against Esposito is warranted.

- First, Esposito made affirmative misstatements and false reports to Cline *after* IAD completed its investigation. Although Esposito made these misstatements before Supt. Cline made his final decision, the statements were not themselves the subject of the previous investigation, and they are therefore unexamined, and, importantly, unaffected by any prior findings. CPD might, therefore, elect to open an investigation into these false statements without concern of administrative double jeopardy.

- Second, the Illinois appellate court decision, which was predicated upon and published *findings* against Esposito, by name, for having engaged in affirmatively *unlawful* conduct. The opinion in substance and in fact was *itself* likewise not the subject or otherwise part of the IAD investigation or the findings and charges it advanced in support of its disciplinary recommendation to Supt. Cline. Indeed, Esposito's To/From memorandum to Supt. Cline predates the appellate court opinion by nine months; it necessarily was not a part of Esposito's defense nor the IAD advocate's review and recommendation. As such, that administratively unconsidered published judicial opinion might therefore be regarded as constituting a new and distinct basis for disciplinary process for, among other things, having brought discredit upon the department in violation of Rule 2.

- Third, the serial rounds of formal adverse administrative and judicial findings regarding Esposito's activities in connection with his operation of [redacted] pertain to conduct that bears directly upon Esposito's character for truthfulness. *See, e.g.*, Fed. R. Evid. 608. As such, it constitutes impeachment information that the government has a constitutional obligation to disclose in discovery to the defense in any criminal matter in which Esposito is proffered as a witness. *See Giglio v. United States*, 405 U.S. 150 (1972). Esposito's failure to disclose the adverse judicial ruling in his To/From

memorandum to Supt. Cline raises a question warranting inquiry about whether he has made appropriate disclosure of those adjudicated findings in any criminal proceeding he may have testified as witness for the government in the nine years since a Circuit Court judge affirmed the DOAH findings or in the seven years since the 1st Appellate Court's decision. If Esposito has so testified without having disclosed the *Giglio* material against him, each such instance may itself constitute a possible violation of his administrative and legal duties that may support disciplinary action or, at minimum, counsel management action short of discipline to assure Esposito is removed from responsibilities for which his testimonial truthfulness might be at issue.

- Finally, OIG review along with anecdotal information suggests a possible undisclosed conflict of interest that may warrant additional review and, if substantiated, may vitiate Supt. Cline's prior disposition of IAD proposed charges and discipline. If so, the previous underlying conduct and charges might be subject to reconsideration without constituting administrative double jeopardy.

The foregoing are not mutually exclusive options.

Attached hereto as **Exhibit B** is timeline of events as OIG presently understands them, upon which the following analysis is based.

I. ESPOSITO'S FALSE STATEMENTS TO THE SUPERINTENDENT IN THE ESPOSITO TO/FROM

On August 31, 2006, Esposito authored the Esposito To/From, in which he made several statements that were (a) problematic from a Rule 14 perspective, *i.e.*, they are false reports; *and* (b) never the subject of an IAD investigation. As such, the false and otherwise problematic statements in the Esposito To/From may serve as the basis for a new disciplinary investigation against Esposito.

A. Esposito Made Affirmatively False Statements to the Superintendent

In at least two instances, Esposito made affirmatively false statements in his August 31, 2006 written memorandum to Superintendent Cline (the "Esposito To/From," attached hereto as **Exhibit C**), that are contradicted by sworn testimony and documents admitted before an adjudicator.

First, Esposito made an affirmatively false statement in response to the Rule 2, Count 5 allegation that he "submitted false and fraudulent documents to the Department of consumer Services in order to obtain licensing for [redacted]." Esposito wrote that he "never willingly or knowingly submitted false or fraudulent documents to the Department of Consumer Services. Any document submitted by R/Det for insurance purposes were received from [redacted] the insurance agent. These documents were believed to be current and valid."

This statement is directly contradicted by [redacted], who testified before DOAH that certificates were fraudulent and were not prepared by himself or anyone from his company. [redacted] noted that documents that Esposito sent were rife with errors: [redacted] own name was misspelled; portions of the certificates were "filled in" while others appeared to have been

generated by a computer; discrepancies between the dates on which the certificates had allegedly been prepared and the dates on which they had allegedly been filed by his office; and two of the certificates listed locations that [redacted] did not remember "being scheduled." Given the great weight of the testimonial and documentary evidence, and the findings of fact by three different tribunals that Esposito did indeed submit fraudulent documents, Esposito's statement to the contrary should be treated as an affirmatively false statement, which Esposito made in violation of Rule 14.

For the same reasons, Esposito's repeated statements about his "good-faith belief" that he had insurance coverage, and thus he did not violate the law (Rule 1, Count 2) or bring discredit upon the Department (Rule 2, Counts 1, 2, and 7) should be treated as, at best, statements that are not credible. Whether these statements about belief rise to the level of affirmative falsehoods in CPD's Rule 14 rubric is an open question.

Second, Esposito made the same affirmatively false statement in response to an allegation under two different rules: the Rule 2, Count 6, and Rule 20 allegations that he "failed to submit a written report that he was under investigation by the City of Chicago' Department of Consumer Services." Esposito wrote that he "was not aware he was under investigation by the Department of Consumer Services. . . . At no time was R/Det informed he was under investigation by the Department of Consumer Services. The Administrative Notice of Violations that were issued are tickets payable by fine only, similar to a parking ticket."

Esposito's claims of ignorance are demonstrably false. We enclose here as **Exhibit D** the case file *for only one* of the eleven cases DOAH opened against Esposito and [redacted]. This case file demonstrates that Esposito's claim that he did not know he was the subject of the cases is not credible, thereby making his statement false. In pertinent part, the case file contains:

- Notices, orders, and pleadings that show how DOAH captioned this case as "*City of Chicago v. Frank Esposito and* [redacted]" since the case's inception, *see* **Exhibit D** pp. 1-6, 15-16, 28-29, 41-42, 55-56, 69-72;
- An August 28, 2003 administrative hearing notice from DCS to Frank Esposito personally, referencing the case "*City of Chicago v. Frank Esposito,*" *see* **Exhibit D**, p. 6; and
- Three separate ANOVs issued to "Frank Esposito," *see* **Exhibit D**, p. 6-9.

This case file is representative of the *ten other* DOAH case files. Esposito's claim that he was unaware that he was the subject of the case is patently false and constitutes a violation of Rule 14.

B. Esposito Also Made Misleadingly Incomplete Statements to the Superintendent

Esposito also made two misleadingly incomplete statements that omitted material facts in his response to allegations that he "committed acts of consumer fraud and deceptive practices," which was the second count for violations of each of Rules 1 and 2. Esposito twice wrote that he had "never committed any acts of consumer fraud or deceptive practice." Esposito failed to

mention that by the time he wrote his report to the Superintendent, DOAH found him liable for committing deceptive acts and fraudulent practices and the CCCC upheld that finding. By omitting these material facts, Esposito created the impression that he had not been adjudged as having engaged in this conduct *two times*, which reasonably could have been a factor in the Superintendent's review.

That Esposito and [redacted] appealed to the Appellate Court is of no help to Esposito. In fact, it bolsters the case that he lied in the Esposito To/From. Esposito's notice of appeal predates the Esposito To/From by more than eight months. In other words, by the time Esposito made his report to the Superintendent, he had already conceded his liability in the Appellate Court. The appeal to the Appellate Court, which Esposito and [redacted] initiated in December 2005, was exclusively about issues of law (constitutionality of fine and Esposito's personal liability for monies [redacted] owed), and not the factual findings. As the Appellate Court noted in its opinion, Esposito and [redacted] did not contest liability, and they did not "dispute the DOAH's findings that Esposito failed to have insurance for [redacted] from February 10, through June 30, 2003, that Esposito knew or should have known that [redacted] was uninsured, that the certificates of insurance were altered to obtain a valet parking license, that Esposito falsely represented to the public that [redacted] was insured from February 10, 2003, through June 30, 2003, that Esposito's conduct was deceptive to the public and interfered with the Department's duties to issue valet parking licenses, and that Esposito failed to appear at the hearing regarding the [redacted] complaint." [redacted]

II. DOUBLE JEOPARDY MAY NOT APPLY IN THIS CASE

OIG believes that the foregoing provides significant, *new* multi-fold grounds for consideration of disciplinary action against Esposito under the first three bulleted options set forth in pp. 2-3 above. Because they are predicated on information and possible charges outside the scope of the prior IAD investigation, they would not implicate administrative double jeopardy.

We would be remiss in not raising one additional, albeit more attenuated argument that does not rely on new evidence or charges, but rather might open the door to reconsideration of the prior IAD findings and recommended charges and discipline. Specifically, OIG believes that certain administrative and anecdotal information might be regarded as calling into question whether Esposito was actually subject to administrative jeopardy in the prior administrative disposition of the charges advanced by IAD. Esposito and Supt. Cline appear to have had a longstanding professional relationship, and on many occasions served within the same units (often at the same times). While this alone might raise a red flag of a potential *appearance* of conflict and/or bias, it would not alone be dispositive. However, the professional relationship also may have had a close personal character based on OIG's anecdotal understanding that Supt. Cline's was as a member of Esposito's wedding party. These facts in their totality do raise a more compelling concern of potential conflict of interest and bias, and the consequential argument that Supt. Cline should have recused himself. Under such a view of the facts, which OIG believes would require further investigation, Supt. Cline's failure to recuse himself might be sufficient to render the decision to not sustain the prior IAD investigation a nullity. If the risk of

discipline was as a practical matter non-existent because of bias, or the conflict of interest such that fair judgment was impossible, then Esposito might arguably be regarded as never having been in jeopardy in the first place. Therefore, the protections against double jeopardy would not apply because those protections only apply when the accused has *actually* been placed at risk of discipline. *See United States ex rel. Aleman v. Circuit Court of Cook County,* 967 F.Supp. 1022 (N.D. Ill. 1997). Assuming that Esposito has been afforded his rights under the applicable collective bargaining agreement, after a determination that the prior decision was a nullity, CPD might arguably proceed immediately to disciplining Esposito for the specific conduct previously investigation and recommended for action by IAD.

When CPD makes a determination regarding the above matter, please provide OIG with information, in writing or by phone, of that decision. If CPD recommends discipline in regard to this matter, please provide us with the relevant documents that show the disciplinary recommendation.

OIG makes this referral with full appreciation of the procedural complexities confronting CPD in this matter. We hope the foregoing is of assistance to the Department and we stand ready to provide any further assistance as may be desired.

Our contact persons for this matter is Daniel Glad, Assistant Inspector General. Please contact him at 773-478-5231 or dglad@chicagoinspectorgeneral.org if you would like to discuss further.

Respectfully,

/s

Joseph M. Ferguson
Inspector General
City of Chicago

TIMELINE OF EVENTS

1. Feb. 11, 2003: [redacted] insurance agent, Geoff Olsen, sent a letter to Esposito and [redacted] advising that the policy was cancelled for non-payment of premiums.

2. June 13, 2003: The [redacted] vehicle is parked at an [redacted] location, but not returned.

3. July 2003: DCS opens an inquiry into [redacted] and Esposito, and DCS requests that both provide documents and attend an informal hearing.

4. Aug. 4, 2003: IAD provided official notice of allegations to Esposito, which generally overlapped with the DOAH cases, but also included an allegation that Esposito threatened to file criminal harassment charges against one of the patrons of [redacted].

5. Aug. 6, 2003: Date of informal hearing before DCS at which Esposito and [redacted] were to provide documents requested. Esposito did not attend.

6. Aug. 8, 2003: IAD interviewed Esposito.

7. On or around Aug. 26, 2003: The City opens 11 different cases against [redacted] and Esposito, one case for each [redacted] location, and issues over 30 administrative notices of violation to Esposito and [redacted].

   (a) In eight of those cases, the City charged Esposito and [redacted] with:

      (i) operating a valet parking service without liability insurance coverage and, therefore, without a valid valet parking operator license, from February 10, 2003, to June 30, 2003; and

      (ii) providing false insurance certificates to the City.

   (b) In one case, which related to the location where [redacted] parked his car, the City charged Esposito and [redacted] with:

      (i) operating a valet parking service without liability insurance coverage and, therefore, without a valid valet parking operator license, from February 10, 2003, to June 30, 2003;

      (ii) providing false insurance certificates to the City;

      (iii) engaging in acts of consumer fraud and deception;

      (iv) misrepresenting status of insurance to customers;

      (v) failure to stamp receipts with dates and times as required by City ordinance;

      (vi) failure to attend the DCS informal hearing; and

(vii) failure to return a valet receipt to a parking patron.

(c) The other two cases involved charges against [redacted] only for deceptive practices and illegally parking a particular vehicle.

8. Aug. 28, 2003: DOAH sent Esposito and [redacted] notices of administrative hearings. DOAH sent separate notices to Esposito and [redacted], and enclosed various ANOVs (many of which name Frank Esposito) and the insurance certificates the City believed to be fraudulent.

9. Sep. 10, 2003: IAD provided another notice of allegations to Esposito (identical to the one they provided on August 4, 2003) and immediately interviewed Esposito.

10. Nov. 21, 2003: DOAH held consolidated hearing on all of the cases.

(a) The City put on six witnesses, including [redacted] insurance agent, [redacted], who testified that the documents Esposito submitted to the City were forgeries. [redacted] put on one witness. Esposito did not appear personally and did not testify.

(b) After arguments, DOAH found Esposito and [redacted] liable on all charges. Specifically, the DOAH found

(i) that Esposito knew or should have known that his business was uninsured;

(ii) that the certificates of insurance were altered to deceive the Commissioner and to obtain a license, which was deceptive to the public;

(iii) that Esposito falsely represented to the public that [redacted] was insured;

(iv) that Esposito's misrepresentations obstructed the Commissioner's duty to issue valet parking licenses; that [redacted] was at fault for the $200 parking ticket issued to [redacted];

(v) that [redacted] failed to time-stamp [redacted] valet parking ticket; that Esposito failed to appear at the hearing regarding the [redacted] incident;

(vi) that the [redacted] family was entitled to reimbursement for the damage to their vehicle; and

(vii) that Esposito failed to have insurance, and, thus, a valid valet parking license, from February 10, 2003, to June 30, 2003.

(c) DOAH imposed $116,050 in fines against [redacted] and Esposito.

11. Dec. 24, 2003: Esposito and [redacted] filed petition for review in CCCC. Esposito challenged DOAH's ruling on three grounds: the quality of the record was insufficient and did not support DOAH's conclusions, DOAH's findings of liability, and DOAH's imposition of fines on Esposito and [redacted]

12. Feb. 24, 2004: IAD interviewed a DCS attorney regarding Esposito and his case. The DCS attorney advised IAD of the DOAH finding of liability, the strength of the evidence overall, and the evidence that Esposito submitted fraudulent documents to the City. IAD also learned that Esposito had been fined $116,050.

13. May 20, 2004: IAD interviewed Esposito again. When IAD asked about insurance agent [redacted] testimony regarding fraudulent documents, Esposito responded that he did not attend the hearing.

14. Sep. 16, 2004: IAD Commander Kirby authored report recommending Esposito's separation from CPD for violations of Rules 1, 2, 14, and 20, based on allegations of Esposito's conduct of his valet business (which were the matters before DOAH and CCCC), Esposito's false reports and statements to IAD during two interviews, and Esposito's failure to inform CPD that he was under investigation. Former Superintendent Phillip Cline's notation on this report is that he did not approve the recommendation, and there is a marginal note reading "30 days."

15. Oct. 22, 2004: CCCC disposed of the first issue in Esposito's appeal, and held that the DOAH record was sufficient.

16. Dec. 10, 2004: CCCC upheld DOAH's findings of liability, disposing of the second issue. However, CCCC remanded the last issue, fines, for a new hearing before DOAH.

17. Mar. 17, 2005: DOAH held a hearing on fines, at which no testimony was taken or evidence presented. DOAH ruled that nine of the violations were issued to Esposito personally (and to the corporation, [redacted], and that, based upon Esposito's personal participation in the fraud perpetrated against the City, the fines were joint and several.

18. May 5, 2005: Esposito and [redacted] file petition for review in CCCC on issues the purported cruel and unusual amount of and Esposito's personal liability for fines.

19. Nov. 18, 2005: CCCC rejected the appeal and upheld DOAH's ruling on fines.

20. Dec. 14, 2005: Esposito and [redacted] file a notice in CCCC indicating that they will appeal the CCCC judgment. Esposito's eventual appeal to the Appellate Court of Illinois focused on whether the fine amounts were constitutional and whether Esposito could be personally liable to pay fines imposed on [redacted] There was no appeal to the Appellate Court on the issue of liability.

21. Aug. 23, 2006: Kirby sent a memo to Cline regarding his non-concurrence with the previous recommendation of separation and suggestion of a 30-day suspension. Kirby recommended proceeding with the 30-day suspension.

22. Aug. 30, 2006: Esposito requested review of the suspension recommendation by Superintendent Cline.

23. Aug. 31, 2006: Esposito sent a memo to Cline in which Esposito responded to the allegations against him.

24. Nov. 3, 2006: Daniel Mahoney, IAD Department Advocate, sent Cline a memo regarding the Esposito case. After reviewing the case and the Esposito To/From, Mahoney recommended a 30-day suspension.

25. May 29, 2007: The Illinois Court of Appeals releases its decision in the case [redacted]. In the opinion, the Appellate Court affirmed the CCCC rulings and spoke approvingly of the DOAH decisions. The opinion provided details of the record before DOAH, CCCC, and the Appellate Court. In particular, the court noted that "[t]his record shows that Esposito personally instigated and actively participated in the fraudulent acts perpetuated upon the City and the general public." *Id.* at 853. The court particularized Esposito's personal conduct: "Esposito's submission of forged insurance certificates to obtain a license" and "Esposito's conduct in fraudulently submitting forged insurance certificates and knowingly operating [redacted] without insurance or a valid license." *Id.* at 857.

26. Aug. 15, 2007: Cline declined to impose a 30-day suspension on Esposito, indicating he did not sustain the allegations.

EXHIBIT
A

373 Ill.App.3d 838
Appellate Court of Illinois,
First District, First Division.

EXPRESS VALET, INC., and Frank Esposito, Petitioners–Appellants,
v.
The CITY OF CHICAGO, a Municipal Corporation, Respondent–Appellee.

No. 1–05–3998. | May 29, 2007.

Synopsis

Background: Petitioners sought review of decision of Department of Administrative Hearings (DOAH) finding them liable for multiple violations of municipal code arising out the operation of a valet parking service. The Circuit Court, Cook County, Edna M. Turkington, J., affirmed. Petitioners appealed.

Holdings: The Appellate Court, McBride, P.J., held that:

[1] administrative record was not inadequate to permit meaningful review;

[2] owner of valet company could be held personally liable for violations of municipal code; and

[3] aggregate fine of $135,825 imposed for 1,287 violations of municipal code was not unconstitutional.

Affirmed.

Attorneys and Law Firms

**967 Thomas P. Needham, for Petitioners–Appellants.

Mara S. Georges, Corporation Counsel, Chicago (Benna Ruth Solomon, Deputy Corporation Counsel, Myriam Zreczny Kasper, Chief Assistant Corporation Counsel, Christopher Norborg, Assistant Corporation Counsel, of counsel), for Respondent–Appellee.

Opinion

Presiding Justice McBRIDE delivered the opinion of the court:

*839 ***954 Petitioners, Express Valet, Inc., and Frank Esposito, appeal from orders of the circuit court of Cook County affirming the decisions of the Department of Administrative Hearings (DOAH). The DOAH initially found petitioners liable for violating multiple sections of the Municipal Code of Chicago (the Code) arising out the operation of a valet parking service in the City of Chicago, and imposed various fines based upon those violations. On administrative review, the circuit court affirmed the DOAH's findings as to liability, but remanded the matter to the DOAH for a new hearing on fines. Following that hearing, the DOAH imposed new fines on petitioners for their violations of the Code, and the DOAH's decision was affirmed by the circuit court on administrative review.

Petitioners appeal, contending that (1) the record filed by the City of Chicago (the City) as its answer to the initial complaint for *840 administrative review failed to comply with section 3–108 of the Administrative Review Law (735 ILCS 5/3–108(b) (West 2002)); (2) that the DOAH erred by finding that the fines imposed were the individual responsibility of Esposito rather than the corporate responsibility of Express Valet; and that (3) the fines imposed by the DOAH are excessive and unconstitutional.

In August 2003, respondent, the City, issued a series of "Administrative Notice[s]" charging Esposito and Express Valet with multiple violations of the Code. The City filed 11 administrative cases against Esposito and Express Valet arising from these violations. In eight of those cases, each of which involved a location in the City of Chicago where petitioners operated a valet parking service, Express Valet and Esposito were charged with violating sections 4–232–060 and 4–232–070 of the Code. Chicago Municipal Code §§ 4–232–060, 4–232–070 (amended December 9, 1992, and October 28, 1997, respectively). Specifically, petitioners were charged with operating a valet parking service without liability insurance coverage and, therefore, without a valid "valet parking operator license," from February 10, 2003, to June 30, 2003. Section 4–232–060(a) of the Code provides:

"[N]o person shall conduct a valet parking service unless he has a valid valet parking operator license issued in accordance with this chapter. A separate license is required for each loading area served." Chicago Municipal Code § 4–232–060(a) (amended December 9, 1992).

Section 4–232–070(b) of the Code provides:

"No valet parking operator license, or renewal thereof, shall be issued unless the applicant provides proof to the commissioner that he has obtained liability insurance covering all locations at which he operates or seeks to operate * * *. *Upon termination or lapse of the licensee's insurance coverage, any license issued to him shall automatically expire.*" (Emphasis added.) Chicago Municipal Code § 4–232–070(b) (amended October 28, 1997).

In each of those eight cases, petitioners were also charged with violating section 2–24–050 of the Code by providing false insurance ***955 **968 certificates to the Department in order to obtain a valet parking license and thereby obstructing the Commissioner of Consumer Services (Commissioner) in the performance of his duties. Section 2–24–050 of the Code provides: "No person shall * * * obstruct the commissioner of consumer services * * * in the performance of his duties." Chicago Municipal Code § 2–24–050 (1990).

In the ninth case, corresponding to another location where petitioners operated a valet parking service, Express Valet and Esposito *841 were again charged with violating sections 4–232–060, 4–232–070, and 2–24–050 of the Code. Additionally, petitioners were charged with two violations of section 2–24–060(a) of the Code, which provides in relevant part that "[n]o person shall engage in any act of consumer fraud, unfair method of competition or deceptive practice while conducting any trade or business in the city." Chicago Municipal Code § 2–24–060(a) (amended November 12, 1997). Specifically, the administrative notices alleged that petitioners took possession of Adam Mednis' vehicle and gave him a receipt which falsely indicated that Express Valet had the liability insurance coverage required by the Code. The notices further alleged that Express Valet took possession of Mednis' vehicle while "holding itself out to be a valet parking service conducting business in accordance with municipal ordinances and returned [the] vehicle to [an] unauthorized third party." In the same case, petitioners were charged with violating section 4–276–470(a)(1) of the Code by misrepresenting to customers that Express Valet was a properly licensed and insured valet parking service from July 1, 2002, to June 30, 2003. Section 4–276–470(a)(1) of the Code states:

"It shall be unlawful for any person to act, use or employ any deception, fraud, false pretense, false promise or misrepresentation, or to conceal, suppress or omit any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale * * * or advertisement of any merchandise." Chicago Municipal Code § 4–276–470(a)(1) (amended December 9, 1992).

Petitioners were also charged with violating section 4–232–070(d) of the Code by failing to stamp a receipt with the date and time the vehicle was returned to the patron, and by failing to return the receipt to the patron. Section 4–232–080(d) of the Code provides in relevant part:

"When a valet parking attendant returns custody of the vehicle to the owner, the attendant must time stamp the receipt with the time and date the valet parking operator surrendered custody of the vehicle, and return it to the patron." Chicago Municipal Code § 4–232–080(d) (amended October 28, 1997).

Petitioners were further charged with violating section 2–24–050 of the Code by failing to attend an informal hearing scheduled for August 6, 2003, and provide the documentation requested by the Department of Consumer Services (the Department). Finally, petitioners were charged with violating section 2–24–060(a) by giving receipts to customers from February 10, 2003, to June 30, 2003, that falsely indicated that Express Valet had the required liability insurance.

*842 In the tenth case, Express Valet was charged with violations of sections 4–232–060(a) and 4–232–070(b) of the Code. In addition, Express Valet was charged with violating section 4–232–080(d) of the Code by issuing receipts that failed to disclose the company's correct business address. Section 4–232–080(d) of the Code provides in relevant part that:

"All valet parking attendants must, upon taking custody of a patron's vehicle, ***956 **969 issue a numbered receipt to each customer containing the name, address and telephone number of the company providing the valet service * * *." Chicago Municipal Code § 4 232–080(d) (amended October 28, 1997).

In the final case, Express Valet was charged with violating section 4–232 080(b) of the Code by illegally parking Eric Fiche's Honda Civic on May 9, 2002. Section 4 232–080(b) of the Code states:

"No valet parking service operator shall park or suffer its agents to park patrons' vehicles upon the public way except under lawful conditions * * *. * * * [T]he fine for any parking or compliance violations incurred by a vehicle while in the custody of a valet parking operator shall be the sole responsibility of the valet parking operator * * *." Chicago Municipal Code § 4–232 080(b) (amended October 28, 1997).

Express Valet was also charged with violating section 2–24–060(a) of the Code by failing to inform Fiche that his car was illegally parked and had received a ticket while in custody of Express Valet. Pursuant to section 2–24–060(e)(2) of the Code, which authorizes the Commissioner to order restitution be paid to "persons aggrieved" by violations of 2–24 060(a), Express Valet was ordered to pay $200 to Fiche for the parking ticket. See Chicago Municipal Code § 2–24–060(e)(2) (amended November 12, 1997).

The DOAH heard all of these cases at a consolidated administrative hearing on November 21, 2003. At that hearing, the City presented the testimony of six witnesses.

Eric Fiche testified that on May 9, 2002, Express Valet parked his Honda Civic at a restaurant and that approximately two months later he received a notice from the City that he had received a $200 ticket for a parking violation that had occurred on May 9, 2002. In July 2002, Fiche contacted Esposito, who acknowledged that he knew of the ticket and promised Fiche that he would reimburse him for the fine. According to Fiche, he was never reimbursed for the ticket.

Bettina Johnson testified that she is employed by the City's Department of Consumer Services and is responsible for the licensing of valet parking companies. The license period for a valet parking license is generally from July 1 of the current year to June 30 of the *843 following year. Johnson testified that in order to obtain a valet parking license, an applicant must fill out an application, pay a fee, and provide a number of supporting documents, including a certificate of insurance with effective and expiration dates. Johnson testified that if a valet parking company's insurance is cancelled, the insurance company notifies the Department, which then advises both the company and the Department's investigators.

Johnson testified that Esposito was the person she "dealt with from Express Valet" regarding valet parking service licenses and that no other person represented Express Valet in its dealings with the Department. In June or July of 2002, Esposito visited the Department's licensing facility to renew Express Valet's valet parking service licenses and submitted proof of insurance for various locations where he operated a valet parking service. Johnson identified the insurance certificates that Esposito submitted to show that Express Valet was insured at 10 different locations from June 30, 2002, to June 30, 2003. Each document, titled "Certificate of Liability Insurance," was purportedly prepared by Byrne, Byrne & Co., and signed by Geoff Olsen.

On cross-examination, Johnson testified that sometime after July, 2003, she received ***957 **970 notice that Express Valet's insurance had been cancelled. When Johnson subsequently contacted Esposito by telephone to inform him of this, Esposito responded that he had no knowledge of any such cancellation.

Geoffrey Olsen, an insurance agent for Byrne, Byrne & Co., testified that he sold insurance to Esposito beginning in 1999 or 2000. Olsen reviewed each of the certificates of insurance that Johnson identified as having been submitted by Esposito and testified that none of them had been prepared by himself or anyone else from his company. Among the irregularities in the certificates that led him to this conclusion, Olsen noted that his name was misspelled; that portions of

the certificates were "filled in" while others appeared to have been generated by a computer; that there were discrepancies between the dates on which the certificates had allegedly been prepared and the dates on which they had allegedly been filed by his office; and that two of the certificates listed locations that Olsen did not remember "being scheduled." Olsen further testified that the effective dates of the last insurance policy he sold to Esposito were November 21, 2002, to November 21, 2003, and that he sold this policy to Esposito over the telephone in early November. After that policy was issued, Olsen made "numerous phone calls" to Esposito in an attempt to obtain the premium for the policy. Olsen spoke to Esposito in mid-to-late December 2002, and told Esposito that he needed to send the down *844 payment and the finance agreement immediately if the policy was to continue. Olsen never received either the finance agreement or the payment from Esposito. On February 11, 2003, Olsen sent Esposito a letter informing him that the insurance policy for Express Valet was cancelled as of February 10, 2003, "for non-payment of premium."

Albert Lagunas, an investigator for the Department, testified that on July 17, 2003, he was assigned to check the valet stand at an establishment known as the "Leg Room." There was a sign in front of that building advertising that parking was provided by Express Valet. Lagunas issued citations to Express Valet for operating without a valet license, for issuing tickets to customers that had an incorrect business address for Express Valet, and for not having insurance.

Adam Mednis testified that on June 13, 2002, he went to the "Leg Room" and left his car with Express Valet. In exchange for his car, Mednis was given a ticket stating that Express Valet had liability insurance as required by the Code. Upon exiting the club, Mednis was told by the valet parking attendant that his car had been given to someone else by mistake.

Tina Mednis (Tina), Adam Mednis' mother, testified that she contacted Esposito after her son's car was stolen. She obtained Esposito's telephone number from the valet ticket given to her son in front of the "Leg Room." Tina testified that Esposito refused to provide her with Express Valet's insurance information and that she eventually obtained this information from the manager of the company that operates the "Leg Room." Tina also spoke with Olsen, who told her that Express Valet's insurance policy had been cancelled. Tina further testified that her son's vehicle was recovered by the police approximately three weeks after it was stolen. The vehicle was "smashed," and everything was stolen out of it. Shortly thereafter, Tina filed a complaint with the Department against Express Valet. She received a notice from the Department to attend an informal fact-finding hearing regarding the incident on July 23, 2003. A notice was also sent to Express Valet, 1925 North Lincoln Avenue, Chicago, Illinois, ***958 **971 noting the date, time and place of the hearing and stating that failure to attend the hearing would constitute a separate violation. Tina testified that no one from Express Valet attended the hearing.

Esposito and Express Valet presented the testimony of Adriane Williams, a manager at Express Valet. Williams testified that he was working at the "Leg Room" on the night of June 13, 2003, and that two people paid for the valet parking and drove off in Mednis' vehicle. Williams further testified that he did not comply with the Code requirement that a customer's receipt must be time-stamped and that he was not aware of this requirement until after the Mednis incident.

*845 Following arguments, the DOAH found Esposito and Express Valet liable on all charges in each of the 11 cases. Specifically, the DOAH found that Esposito knew or should have known that his business was uninsured; that the certificates of insurance were altered to deceive the Commissioner and to obtain a license, which was deceptive to the public; that Esposito falsely represented to the public that Express Valet was insured; that Esposito's misrepresentations obstructed the Commissioner's duty to issue valet parking licenses; that Express Valet was at fault for the $200 parking ticket issued to Fiche; that Express Valet failed to time-stamp Mednis' valet parking ticket; that Esposito failed to appear at the hearing regarding the Mednis incident; that the Mednis family was entitled to reimbursement for the damage to their vehicle; and that Esposito failed to have insurance, and, thus, a valid valet parking license, from February 10, 2003, to June 30, 2003. The DOAH entered separate orders finding petitioners liable in

each of the 11 cases and imposing $116,050 in fines, costs, and restitution against Esposito and Express Valet.

Petitioners filed a petition for administrative review in the circuit court of Cook County on December 24, 2003. The City answered and moved for a specification of errors. Petitioners' specification of errors asserted that the administrative record "was so incomplete that it [could not] be reviewed," that the DOAH erred by failing to specify whether liability for the ordinance violations rested with Express Valet or Esposito, and that the fines imposed were excessive and unconstitutional. The City agreed that some of the fines imposed were not consistent with the Code and that the matter should therefore be remanded "for the sole purpose of imposing fines." On October 22, 2004, the circuit court entered an order stating that the record was "adequate for [the court's] review." On December 10, 2004, the court entered an order affirming DOAH's findings as to liability, but remanding the matter "for the purpose of a new hearing on fines." The court instructed the hearing officer to "address who [the] fines were imposed against."

On remand, the parties submitted briefs on the issue of fines. The City requested that, for each ordinance violation, the DOAH impose the maximum fine permitted under the Code. The City also argued that Esposito should be personally liable for the fines imposed because he personally and actively participated in deceptive and fraudulent acts. Petitioners responded that the maximum fines being sought by the City were excessive and unconstitutional, and that the DOAH had no authority to grant the City's request to "pierce the corporate veil" and hold Esposito personally liable for the fines imposed. The DOAH held a hearing on the matter on March 17, 2005, at which no testimony ***846** or evidence was presented. At the conclusion of that hearing, the DOAH found that nine of the citations were issued to Esposito personally and to the corporation, Express *****959** ****972** Valet, Inc., and that, based on Esposito's personal participation in the fraud perpetuated against the Department, the fines in those nine cases were the joint and several responsibility of Esposito and Express Valet.

In 8 of the 11 cases, the DOAH imposed $14,625 in fines and costs. In each of those cases, the DOAH fined petitioners $14,100, or $100 per offense, for violating section 4–232–060 of the Code by operating without a license for 141 days (February 10, 2003, to June 30, 2003). The DOAH also fined petitioners $500 in each of the eight cases for violating section 2–24–050 of the Code by submitting fraudulent insurance certificates and therefore interfering with the Department, and suspended Express Valet's license to do business at each location for violating section 4–232–070(b) of the Code by operating without insurance.

In the ninth case, the DOAH ordered Esposito and Express Valet to pay $1,000 in restitution to Tina Mednis and assessed $16,525 in fines and costs. Specifically, the DOAH fined petitioners $14,100 for operating without a license at the "Leg Room," $500 for interfering with the Department, $500 for violating section 2–24–050 of the Code by failing to attend the hearing before the Department concerning the Mednis complaint, $300 for each of three violations of section 2–24–060(a) of the Code, which were based on petitioners having engaged in acts of consumer fraud or deceptive practice, $300 for violating section 4–276–470 of the Code by misrepresenting to customers that Express Valet had a licensed valet parking service, and $200 for violating section 4–232–080(d) of the Code by issuing a receipt that was not stamped with the date and time the vehicle was returned to the patron. The DOAH also suspended Express Valet's business license.

In the tenth case, the DOAH assessed $475 in fines and costs. The DOAH fined Express Valet $250 for operating without a valid license and $200 for issuing receipts that failed to disclose the company's correct business address and suspended its business license. In the eleventh case, the DOAH assessed $625 in fines and costs. Express Valet was fined $300 for parking Fiche's vehicle in an unlawful manner and $300 for failing to inform Fiche that his vehicle was illegally parked and had received a ticket and was ordered to pay $200 in restitution.

Petitioners filed a petition for administrative review on May 5, 2005. The City answered and moved for a specification of errors. Petitioners' specification of errors asserted that the administrative ***847** record

was "so inadequate" that it could not be reviewed, that the DOAH erred by piercing the corporate veil and holding Esposito and Express Valet jointly and severally liable for the fines imposed, and that the fines imposed were excessive and unconstitutional. Following a hearing, the circuit court affirmed the fines imposed by the DOAH. This appeal followed.

[1] [2] Prior to addressing the merits of petitioners' appeal, we consider the appropriate standard of review. In reviewing a final administrative decision under the Administrative Review Law (735 ILCS 5/3–101 *et seq.* (West 2002)), this court's role is to review the administrative decision rather than the circuit court's decision. *Du Page County Airport Authority v. Department of Revenue*, 358 Ill.App.3d 476, 481, 294 Ill.Dec. 507, 831 N.E.2d 30 (2005). The appropriate standard of review concerning administrative decisions is contingent upon whether the question being reviewed is one of fact, one of law, or a mixed question of fact and law. ***960 **973 *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill.2d 191, 205, 229 Ill.Dec. 522, 692 N.E.2d 295 (1998). In the event that the question is one of fact, our supreme court has stated:

> "[O]n administrative review, it is not a court's function to reweigh the evidence or make an independent determination of the facts. Rather, the court's function is to ascertain whether the findings and decision of the agency are against the manifest weight of the evidence. [Citations.] An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill.2d 76, 88, 180 Ill.Dec. 34, 606 N.E.2d 1111 (1992).

If the question is one of law, however, this court's standard of review is *de novo*. *Branson v. Department of Revenue*, 168 Ill.2d 247, 254, 213 Ill.Dec. 615, 659 N.E.2d 961 (1995). Under the *de novo* standard, little or no deference is afforded the decision-maker's ruling. *Branson*, 168 Ill.2d at 254, 213 Ill.Dec. 615, 659 N.E.2d 961.

[3] For mixed questions of fact and law, or where a case involves an examination of the legal effect of a given set of facts, the court must apply a "clearly erroneous" standard of review. *City of Belvidere*, 181 Ill.2d at 205, 229 Ill.Dec. 522, 692 N.E.2d 295.

> " 'Clearly erroneous' is said to rest somewhere between the 'manifest weight of the evidence' and *de novo*, requiring us to afford some deference to the agency's experience and expertise. [Citations.] Under this standard, we must accept the administrative agency's findings unless we are firmly convinced the agency has made a mistake." *Randolph Street Gallery v. Zehnder*, 315 Ill.App.3d 1060, 1064, 248 Ill.Dec. 780, 735 N.E.2d 100 (2000).

[4] Petitioners first contend that the record filed by the City as its answer to the original petition for administrative review failed to *848 comply with section 3–108(b) of the Administrative Review Law (735 ILCS 5/3–108(b) (West 2002)) and was "so inadequate" that it prevented a meaningful review of the evidence presented at the administrative hearing. Petitioners specifically complain that the transcript of the administrative hearing contains numerous "inaudible" portions, and request that we remand this matter to the Department of Administrative Hearings "to determine if a complete record can be obtained."

Section 3–108(b) of the Administrative Review Law provides that "the administrative agency shall file an answer [to the complaint] which shall consist of the * * * entire record of proceedings under review, including such evidence as may have been heard by it and the findings and decisions made by it." 735 ILCS 5/3–108(b) (West 2002). In this case, petitioners were charged in 11 cases with violating multiple sections of the Code. The DOAH held an administrative hearing on those violations and found petitioners liable on all counts. Petitioners thereafter filed a complaint for administrative review in the circuit court of Cook County. The City filed an answer which it asserted consisted of a "complete" copy of the record of proceedings under review, and moved for a specification of errors. Petitioners' specification of errors argued, among other things, that the administrative record was "so incomplete that it [could not] be reviewed," and that the circuit court could not "perform its role with a transcript such as this." On October 22, 2004, the circuit court entered an order stating that the record was "adequate for [the court's] review." The court subsequently

entered another order affirming the DOAH's findings as to liability but remanding the matter for "a new hearing on fines." On remand, the DOAH imposed fines against petitioners following ***961 **974 briefing by both parties and a hearing at which no evidence was presented. Those fines were upheld by the circuit court on administrative review.

We find that the record submitted by the City in response to petitioners' initial complaint for administrative review fully complied with section 3–108(b) of the Administrative Review Law. Our review shows that the record filed in the circuit court contained all of the exhibits submitted into evidence at the administrative hearing, as well as the transcript of proceedings before the DOAH. We find petitioners' argument that the record is inadequate because the transcript of proceedings contains "inaudible" portions to be without merit because petitioners have not shown how they were prejudiced. See *Booker v. Department of Employment Security*, 216 Ill.App.3d 320, 322, 160 Ill.Dec. 74, 576 N.E.2d 1028 (1991) (finding that plaintiff was not denied due process based on "inaudible" portions in the transcript of the administrative hearing where plaintiff *849 failed to demonstrate how he was prejudiced). Petitioners offer only the general assertion that the gaps in the transcript relate to "crucial" testimony, but point to no specific argument regarding the DOAH's liability findings that they are precluded from raising based upon the "inaudible" portions of the transcript. In light of petitioners' failure to show prejudice, we decline to remand this matter to the DOAH to determine if a complete record can be obtained.

Petitioners also claim that the circuit court erred in affirming the decision of the DOAH because the inadequate record prevented the court from "perform [ing] its role of reviewing the evidence" presented at the administrative hearing. Petitioners rely on *Shallow v. Police Board of the City of Chicago*, 60 Ill.App.3d 113, 17 Ill.Dec. 696, 376 N.E.2d 1025 (1978), and *Neylon v. Illinois Racing Board*, 66 Ill.App.3d 621, 23 Ill.Dec. 639, 384 N.E.2d 433 (1978), to support their argument. However, both of these cases are distinguishable.

In *Shallow*, the transcript of proceedings filed by the Board contained neither the recommendation of the hearing officer nor the findings or final decision of the Board. *Shallow*, 60 Ill.App.3d at 115–16, 17 Ill.Dec. 696, 376 N.E.2d 1025. Based upon that incomplete record, this court stated that it could not be judicially determined whether or not the Board made findings and conclusions on questions of fact, and thus remanded the case to the circuit court "to determine if a complete record [could] be obtained." *Shallow*, 60 Ill.App.3d at 117, 17 Ill.Dec. 696, 376 N.E.2d 1025. In *Neylon*, this court found that the record filed by the Civil Service Commission was insufficient to permit judicial review because it did not contain the exhibits that were submitted at the administrative hearing. *Neylon*, 66 Ill.App.3d at 622–23, 23 Ill.Dec. 639, 384 N.E.2d 433.

Here, in contrast, the record filed by the City contains all of the evidence presented at the administrative hearing, as well as the findings and final decision of the DOAH. In light of the record submitted by the City, and petitioners' failure to point to any specific issue the circuit court was unable to review because of the allegedly "inadequate" transcript, we find that the court did not err by affirming the decision of the DOAH.

[5] Petitioners next contend that the DOAH erred by holding that the fines imposed were the individual responsibility of Esposito rather than the corporate responsibility of Express Valet. Specifically, petitioners assert that the DOAH lacked the authority to hold Esposito personally liable for fines incurred during the operation of Express Valet, that Esposito, in his ***962 **975 status as a corporate officer, cannot be held personally liable for Express Valet's obligations, and that there was insufficient evidence presented at the administrative hearing to "pierce the corporate veil" and hold Esposito personally liable for the fines imposed.

*850 We initially note that, in making this argument, petitioners do not contest any of the DOAH's underlying findings of liability. Therefore, the only question before us is a legal one: whether the Code authorizes individual liability. This issue raises a question of statutory interpretation and, as such, our standard of review is *de novo*. See *Richard's Tire Co. v. Zehnder*, 295 Ill.App.3d 48, 56, 229 Ill.Dec. 587, 692 N.E.2d 360 (1998).

[6] [7] Municipal ordinances are interpreted using the general rules of statutory interpretation and construction. *Puss N Boots, Inc. v. Mayor's License Comm'n*, 232 Ill.App.3d 984, 986, 173 Ill.Dec. 676, 597 N.E.2d 650 (1992). The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *In re Marriage of Rogers*, 213 Ill.2d 129, 136, 289 Ill.Dec. 610, 820 N.E.2d 386 (2004). The plain language of the statute is the best indicator of the legislature's intent, and when that language is clear, its meaning will be given effect without resort to other tools of interpretation. *Metzger v. DaRosa*, 209 Ill.2d 30, 34, 282 Ill.Dec. 148, 805 N.E.2d 1165 (2004).

In this case, the DOAH held that both Esposito and Express Valet were jointly and severally liable for the fines imposed in 9 of the 11 cases consolidated before the DOAH. In each of those cases, Esposito and Express Valet were fined for violating section 4–232–060 of the Code. Section 4–232–060 provides that "[n]o *person* shall conduct a valet parking service unless he has a valid valet parking operator license." (Emphasis added.) Chicago Municipal Code § 4–232–060(a) (amended December 9, 1992). In the ninth case, petitioners were found to have violated section 4–232–080(d) of the Code, which pertains to operating procedures. The penalties for violating these sections are contained in section 4–232–100 of the Code, which provides that "[a]ny *person* convicted of a violation of any provisions of Sections 4–232–060 or 4–232 080 shall be fined not less than $50.00 and not more than $500.00 for each offense." (Emphasis added.) Chicago Municipal Code § 4–232–100 (amended December 9, 1992). "Person," as used in Title 4 of the Code, is defined as "any *individual,* partnership, corporation or entity which conducts, engages in, maintains, operates, carries on or manages a business or occupation within the city of Chicago." (Emphasis added.) Chicago Municipal Code § 4–4–010 (amended December 15, 1999).

In the ninth case, petitioners were also found to have violated section 4–276–470(a)(1) of the Code. Section 4–276–480 of the Code provides that "[a]ny *person* violating * * * Section 4–276–470 shall be fined not less than $50.00 nor more than $500.00 for each offense." (Emphasis added.) Chicago Municipal Code § 4–276–480 (amended December 9, 1992). "Person," as used in section 4–276–480, means "*any natural person* or his legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, ***851** and any agent, employee, salesman, partner, officer, * * * [or] stockholder." (Emphasis added.) Chicago Municipal Code § 4–276–470(b)(3) (amended December 9, 1992).

[8] In each of the nine cases where joint and several liability was imposed, petitioners were fined for violating section 2–24–050 of the Code. Section 2–24–050 provides that "[n]o *person* shall * * * obstruct the commissioner of consumer services *****963 **976** * * * in the performance of his duties." (Emphasis added.) Chicago Municipal Code § 2–24–050 (1990). In the ninth case, petitioners were also fined for violating section 2–24–060, which prohibits any "person" from engaging in any act of consumer fraud or deceptive practice while conducting a business in the city. See Chicago Municipal Code § 2–24–060 (amended November 12, 1997). The penalties for violating these sections are found in section 2–24–080 of the Code, which provides:

> "Any *person* who * * * (3) makes a deliberately false or deliberately misleading information to the commissioner; or (4) deliberately interferes with an investigation conducted by the commissioner * * * shall be subject to a fine of not less than $100.00 nor more than $500.00. * * * Any *person* who otherwise violates Section 2–24–060 shall be subject to a fine of not less than $50.00 nor more than $500.00." (Emphasis added.) Chicago Municipal Code § 2–24 080 (amended April 6, 1990).

Although the Code does not define "person" as it is used in section 2–24–080, the Code consistently defines "person" in other sections to include, among other things, an individual or a corporation. See, *e.g.*, Chicago Municipal Code § 1–16–010(a) (amended March 12, 1986); Chicago Municipal Code § 3–40–030 (amended December 15, 1993); Chicago Municipal Code § 11–4–120 (amended July 19, 2000). Based upon the consistency in these definitions, we conclude that "person," as used in section 2–24–080 of the Code, includes an individual.

As the foregoing makes clear, the Code imposes liability on any "person" who violates its provisions, and "person" is broadly defined to include individuals as well as entities such as corporations. Accordingly, we find that the Code authorizes the imposition of individual liability on corporate officers such as Esposito who violate the provisions at issue in this case. See *Puss N Boots, Inc.*, 232 Ill.App.3d at 987, 173 Ill.Dec. 676, 597 N.E.2d 650, quoting *Benhart v. Rockford Park District*, 218 Ill.App.3d 554, 558, 161 Ill.Dec. 242, 578 N.E.2d 600 (1991) ("When a statute defines its own terms, 'those terms must be construed according to the definitions given to them' ").

[9] Our interpretation of the Code, and the DOAH's imposition of personal liability on Esposito, is supported by principles of agency law. Although corporate officers are generally not liable for the corporation's ***852** torts (*National Acceptance Co. of America v. Pintura Corp.*, 94 Ill.App.3d 703, 706, 50 Ill.Dec. 120, 418 N.E.2d 1114 (1981)), a corporate officer is individually liable for fraudulent acts of his own or those of the corporation in which he participates (*Allabastro v. Cummins*, 90 Ill.App.3d 394, 398, 45 Ill.Dec. 753, 413 N.E.2d 86 (1980)); see also *Citizens Savings & Loan Ass'n v. Fischer*, 67 Ill.App.2d 315, 323, 214 N.E.2d 612 (1966) ("The rule is that whoever participates in a fraudulent act is guilty of fraud"). A corporate officer is liable for the fraud of the corporation if he " 'with knowledge, or recklessly without it, participates or assists in the fraud.' " *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill.2d 473, 502, 180 Ill.Dec. 271, 607 N.E.2d 165 (1992), quoting *Murphy v. Walters*, 87 Ill.App.3d 415, 418–19, 43 Ill.Dec. 107, 410 N.E.2d 107 (1980).

Petitioners argue that the DOAH improperly "pierced the corporate veil" by imposing personal liability upon Esposito. However, piercing the corporate veil is necessary only when seeking to hold an officer liable for the *corporation's obligations*. See, *e.g.*, *Washington Courte Condominium Ass'n–Four v. Washington-* *****964** *_* ****977** *Golf Corp.*, 267 Ill.App.3d 790, 816, 205 Ill.Dec. 248, 643 N.E.2d 199 (1994). In this case, however, the City charged Esposito individually with violating the Code. Each of the citations issued to petitioners clearly named both Frank Esposito and Express Valet as respondents. The record shows that Esposito was the owner and sole officer of Express Valet and, as such, Express Valet necessarily spoke only through him. Bettina Johnson of the Department testified that Esposito was the only person that she "dealt with" from Express Valet, and that Esposito submitted the insurance certificates indicating that Express Valet had the required insurance. Geoffrey Olsen, the agent who sold the insurance policy to Esposito, testified that those certificates were fraudulent and were not prepared by himself or anyone from his company. Olsen also testified that Esposito never made the down payment on the last insurance policy that Olsen sold to him, and that he informed Esposito by letter that the policy was cancelled as of February 10, 2003, "for non-payment of premium." Esposito thereafter continued to operate Express Valet at various locations in the city and advertise that his company had the insurance coverage required by the Code. Additionally, Esposito was the person that patrons contacted to discuss problems with Express Valet. Tina Mednis testified that Esposito refused to give her Express Valet's insurance information so that she could file a claim for the damage to her family's car. Eric Fiche testified that he contacted Esposito regarding the parking ticket that he received while his car was in the custody of Express Valet, and that Esposito did not send him reimbursement for the ticket despite his promise to do so.

Moreover, petitioners do not dispute the DOAH's findings that Esposito failed to have insurance for Express Valet from February 10, ***853** 2003, through June 30, 2003, that Esposito knew or should have known that Express Valet was uninsured, that the certificates of insurance were altered to obtain a valet parking license, that Esposito falsely represented to the public that Express Valet was insured from February 10, 2003, through June 30, 2003, that Esposito's conduct was deceptive to the public and interfered with the Department's duties to issue valet parking licenses, and that Esposito failed to appear at the hearing regarding the Mednis' complaint.

This record shows that Esposito personally instigated and actively participated in the fraudulent acts perpetuated upon the City and the general public. Based upon this record, we conclude that the DOAH did not err in holding that the fines imposed were the individual responsibility of Esposito as well as

that of Express Valet. See *Allabastro*, 90 Ill.App.3d at 398, 45 Ill.Dec. 753, 413 N.E.2d 86; *People ex rel. Ryan v. Aggro, Inc.*, 345 Ill.App.3d 1011, 1028-29, 281 Ill.Dec. 386, 803 N.E.2d 1007 (2004) (finding corporate officer liable for violations of the Environmental Protection Act based upon his own conduct and active participation in those violations).

In reaching this conclusion, we reject petitioners' argument that *JMH Properties, Inc. v. Industrial Comm'n*, 332 Ill.App.3d 831, 266 Ill.Dec. 1, 773 N.E.2d 736 (2002) is controlling and compels us to hold that the DOAH lacked authority to impose personal liability on Esposito. In *JMH Properties*, the claimant was electrocuted at work and thereafter filed claims with the Industrial Commission (Commission) against JMH Properties (JMH) and its principal stockholder. *JMH Properties*, 332 Ill.App.3d at 832, 266 Ill.Dec. 1, 773 N.E.2d 736. An arbitrator denied the claim against the stockholder and found JMH solely liable for claimants injuries. *JMH Properties*, 332 Ill.App.3d at 832, 266 Ill.Dec. 1, 773 N.E.2d 736. The claimant ***965 **978 then filed a complaint in the circuit court, alleging that JMH had failed to pay the arbitrator's award. *JMH Properties*, 332 Ill.App.3d at 832, 266 Ill.Dec. 1, 773 N.E.2d 736. The complaint sought a judgment against JMH for the arbitrator's award, and sought to pierce JMH's corporate veil and enter judgment against the stockholder and his wife. *JMH Properties*, 332 Ill.App.3d at 832, 266 Ill.Dec. 1, 773 N.E.2d 736. The trial court entered judgment against JMH and dismissed the count of the complaint seeking judgment against the stockholder, and the claimant thereafter filed a new complaint with the Commission, asking it to pierce JMH's corporate veil and enter judgment against the stockholder and his wife. *JMH Properties*, 332 Ill.App.3d at 832, 266 Ill.Dec. 1, 773 N.E.2d 736. An arbitrator found the stockholder and his wife personally liable for the judgment against JMH, and that decision was affirmed by the Commission and the trial court. *JMH Properties*, 332 Ill.App.3d at 832, 266 Ill.Dec. 1, 773 N.E.2d 736.

On appeal, this court initially observed that the Commission, as an administrative agency, had no common law powers and possessed only those granted to it by the legislature. *854 *JMH Properties*, 332 Ill.App.3d at 832-33, 266 Ill.Dec. 1, 773 N.E.2d 736. We noted that piercing the corporate veil was an equitable remedy, and that the Workers' Compensation Act (the Act) did not give the Commission the power to grant equitable relief or provide for individual liability against a corporation's officers, directors, or shareholders. *JMH Properties*, 332 Ill.App.3d at 833, 266 Ill.Dec. 1, 773 N.E.2d 736. Accordingly, this court held that the Commission acted outside of its statutory authority when it pierced JMH's corporate veil and reversed the Commission's order imposing personal liability on JMH's shareholder. *JMH Properties*, 332 Ill.App.3d at 833, 266 Ill.Dec. 1, 773 N.E.2d 736.

In this case, unlike in *JMH Properties*, the DOAH did not pierce Express Valet's corporate veil in order to hold Esposito personally liable for Express Valet's obligations. Rather, the DOAH held Esposito personally liable based upon his own conduct and participation in the fraud perpetuated upon the Department and the public. Moreover, unlike the Act at issue in *JMH Properties*, we have already concluded that the Code authorizes individual liability, and petitioners do not contest the DOAH's findings that Esposito's own conduct violated multiple sections of the Code. Accordingly, *JMH Properties* does not control our decision in this case.

Petitioners' final contention is that the fines imposed by the DOAH violate the excessive fines clause of the eight amendment to the United States Constitution (U.S. Const., amend. VIII), as well as the substantive due process requirements of the United States and Illinois Constitutions (U.S. Const., amend. XIV, § 1; Ill. Const.1970, art. I, § 2). Petitioners do not assert that any of the penalty provisions of the Code, including the mandatory per-offense fines, are unconstitutional on their face, but only maintain that the aggregate amount of fines imposed, $135,825, is excessive when applied to the facts of this case and measured against that the alleged wrongdoing. Petitioners request that we remand this matter to the circuit court to enter a "judgment for the amount justified by the record." See 735 ILCS 5/3-111(a)(8) (West 2002).

[10] [11] [12] When considering the validity of municipal ordinances, our analysis is guided by the same standards applicable to statutes. *City of Chicago v. Morales*, 177 Ill.2d 440, 447, 227 Ill.Dec. 130, 687 N.E.2d 53 (1997). Municipal ordinances are presumed

to be constitutional, and the ***966 **979 party challenging the validity of an ordinance has the burden of showing that it violates the constitution. *O'Donnell v. City of Chicago*, 363 Ill.App.3d 98, 105, 299 Ill.Dec. 469, 842 N.E.2d 208 (2005). Courts are obligated to uphold the constitutionality of an ordinance whenever reasonably possible. *City of Chicago v. Alton R.R. Co.*, 355 Ill. 65, 75, 188 N.E. 831 (1933). We review the constitutionality of an ordinance *de novo*. *O'Brien v. White*, 219 Ill.2d 86, 98, 301 Ill.Dec. 154, 846 N.E.2d 116 (2006).

[13] [14] [15] Initially, we find that petitioners have waived their challenge to *855 the constitutionality of the fines imposed by failing to comply with Supreme Court Rule 341(h)(7) (210 Ill.2d R. 341(h)(7)). Supreme Court Rule 341(h)(7) requires appellants' brief to include " '[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.' " *Salgado v. Marquez*, 356 Ill.App.3d 1072, 1074, 293 Ill.Dec. 495, 828 N.E.2d 805 (2005), quoting 210 Ill.2d R. 341(h)(7). " 'A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.' " *In re Marriage of Auriemma*, 271 Ill.App.3d 68, 72, 207 Ill.Dec. 662, 648 N.E.2d 118 (1995), quoting *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill.App.3d 712, 719, 99 Ill.Dec. 397, 495 N.E.2d 1132 (1986). An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Supreme Court Rule 341(h)(7) and is, therefore, waived. *Vincent v. Doebert*, 183 Ill.App.3d 1081, 1087, 132 Ill.Dec. 293, 539 N.E.2d 856 (1989).

In this case, petitioners have offered virtually no analysis as to why the fines imposed are excessive and unconstitutional. The record shows that petitioners committed 1,287 violations of the Code, yet petitioners have failed to address the propriety of any of the individual fines imposed on those violations or the conduct that each represents. Most significantly, petitioners have failed to address that they committed over 1,000 violations of the Code by operating without a valid valet parking license, that each day Express Valet operated in such a manner constituted a separate offense punishable by its own fine, and that the fines imposed for each violation are mandatory and provided by statute. Instead, petitioners have simply aggregated the fines imposed for those violations and claimed that this amount is "excessive." Moreover, petitioners have cited no Illinois case law applying the excessive fines clause to statutory fines such as those in this case, and they do not even argue that the clause should be applied to the type of fines involved here. The cases petitioners do cite as authority for such an application involve civil forfeiture provisions that are different from the penalty provisions in this case. See *Austin v. United States*, 509 U.S. 602, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993); *United States v. Bajakajian*, 524 U.S. 321, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998). In light of petitioners' failure to adequately present a challenge to the fines imposed, we conclude that this issue is waived. *Vincent*, 183 Ill.App.3d at 1087, 132 Ill.Dec. 293, 539 N.E.2d 856.

[16] Waiver aside, we find petitioners' contentions to be without merit. Petitioners first assert that the penalties imposed violate the excessive fines clause of the United States Constitution. Petitioners maintain that the total amount of fines imposed is excessive and represents an *856 amount "vastly greater that what would be sufficient to simply compensate the City or ***967 **980 the other individuals who testified at the original administrative hearing."

[17] [18] The eight amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const., amend. VIII. The excessive fines clause "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.' " (Emphasis omitted.) *Austin*, 509 U.S. at 609–10, 113 S.Ct. at 2805, 125 L.Ed.2d at 497, quoting *Browning–Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265, 109 S.Ct. 2909, 2915, 106 L.Ed.2d 219, 232 (1989). A fine is considered excessive "if it is grossly disproportional to the gravity of a defendant's offense." *Bajakajian*, 524 U.S. at 334, 118 S.Ct. at 2028, 141 L.Ed.2d at 329.

The Code's licensing provisions pertaining to valet parking companies serve a legitimate interest of ensuring that patrons can safely and securely leave their vehicles with a valet parking service. Companies

that interfere with or fail to obey the Code's licensing and insurance requirements undermine the public's expectation that a valet parking service is licensed and regulated by the City. The licensing provisions also ensure that those patrons receive a reasonable service from a valet parking company. The City also has a legitimate interest in securing compliance with the Code's provisions through penalties. See *City & County of San Francisco v. Sainez*, 77 Cal.App.4th 1302, 1315, 92 Cal.Rptr.2d 418, 429 (2000); see also Journal of the Proceedings of the City Council of Chicago, at 25469–10 ("[T]he implementation of a system of uniform, effective fines for violations of the license code provisions will promote compliance with the Code and will serve to effectuate the important public health and safety features of the Code"). Finally, the Code's provisions regarding consumer fraud are designed to prevent the perpetuation of fraud or deceptive practices upon the public.

Petitioners' violations of the Code clearly undermined the City's legitimate interest in licensing valet parking companies and warranted the fines that were imposed. The record shows that Esposito obtained an insurance policy for the relevant period through Geoffrey Olsen, and that Express Valet's insurance was cancelled because Esposito failed to make the required down payment for that policy. A letter was sent to Esposito informing him that the insurance policy was being cancelled, and he nevertheless continued to operate Express Valet without insurance and therefore without a valid valet parking license. Moreover, petitioners do not dispute the DOAH's finding that Esposito knew or should have known that his business was uninsured, ***857** that fraudulent certificates of insurance were submitted to the Department in order to obtain a valet parking license, and that Esposito falsely represented to the public that Express Valet had the required insurance coverage.

Petitioners misleadingly aggregate the fines imposed and claim that this amount, $135,825, is excessive. Petitioners' argument ignores that almost all of that amount is based on a per-offense penalty, and that it was Esposito who controlled the extent of those fines. Specifically, approximately 95% of the total fines imposed, $126,900, were based on multiple violations of section 4–232–060(a) of the Code, which prohibits the unlicensed operation of a valet parking service. Pursuant to section 4–232–100 of the Code, each day that petitioners operated without a license constituted a separate offense, and each offense was punishable by a fine between $50 and $500. The DOAH found that petitioners operated without a license for 141 days at *****968 **981** 9 separate locations, and therefore, petitioners were guilty of 1,269 separate and distinct offenses. Petitioners also ignore that they were fined only $100 per offense, which is near the minimum of the statutory range of fines that could have been imposed. The majority of the remainder of fines imposed, $5,000, is comprised of a $500 fine for each of the 10 violations of section 2–24–050 of the Code, which prohibits interference with the Department in the performance of its duties. Given the seriousness of the conduct that caused those violations—Esposito's submission of forged insurance certificates to obtain a license and failure to attend the hearing before the Department—we do not believe that it was excessive for the DOAH to impose the maximum penalty for each violation of section 2-24-050. Considering the amount of each fine imposed, Esposito's conduct in fraudulently submitting forged insurance certificates and knowingly operating Express Valet without insurance or a valid license, and the City's legitimate interests that are served by the Code, we find that the fines imposed by the DOAH are not grossly disproportionate to the gravity of petitioners' offenses and therefore do not violate the excessive fines clause.

Petitioners also assert that the fines imposed by the DOAH violate the requirements of substantive due process. Petitioners claim that the fines were punitive rather than remedial, and that "punitive damages have traditionally been reserved for malicious and seriously reprehensible defendants." Petitioners maintain that the evidence establishing that Express Valet had a lack of prior history of violations, and the lack of evidence presented by the City showing individuals who suffered a financial loss due to petitioners' violations of the Code, demonstrates that the fines imposed were disproportional to the conduct being punished and the harm caused.

[19] [20] ***858** The due process clause prohibits the legislature from imposing a statutorily created penalty "so severe and oppressive as to be wholly disproportioned to the offense and obviously

unreasonable." *St. Louis, Iron Mountain & Southern Ry. Co. v. Williams*, 251 U.S. 63, 66–67, 40 S.Ct. 71, 73, 64 L.Ed. 139, 141 (1919). A statutory penalty will survive a due process challenge if it bears a rational relationship to a legitimate governmental interest. *People v. Farmer*, 165 Ill.2d 194, 207–08, 209 Ill.Dec. 33, 650 N.E.2d 1006 (1995).

Petitioners cite to *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996) and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003) in support of their argument that the fines imposed are punitive and violate due process. In *State Farm Mutual Automobile Insurance Co.*, the Supreme Court observed that it had created specific guideposts for courts to utilize when reviewing punitive damages based on concerns that punitive damages " 'pose an acute danger of arbitrary deprivation of property' " and that juries are usually left with wide discretion in choosing amounts. *State Farm Mutual Automobile Insurance Co.*, 538 U.S. at 418, 123 S.Ct. at 1520, 155 L.Ed.2d at 601, quoting *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432, 114 S.Ct. 2331, 2340, 129 L.Ed.2d 336, 349 (1994).

The criteria set forth in *BMW of North America* are inapplicable to our analysis because the concerns over the imprecise nature of punitive damages are not present in this case. See *In re Marriage of Chen and Ulner*, 354 Ill.App.3d 1004, 1022, 290 Ill.Dec. 69, 820 N.E.2d 1136 (2004) (declining to apply punitive damages criteria to claim that $100 per-day penalty for violation of Income Withholding for Support ***969 **982 Act was grossly excessive and lacked sufficient due process protections). The penalties imposed on petitioners in this case were statutorily created and clearly provide notice of the range of fines that could be imposed for violations of the Code. Moreover, we have already concluded that the fines do not violate the excessive fines clause in light of the amount of each individual fine, the conduct that each fine represents, and the legitimate interests served by the Code's provisions. For these same reasons, we conclude that the fines imposed on petitioners bear a rational relationship to a legitimate governmental interest and are not so severe and oppressive as to be wholly disproportional to petitioners' offenses.

In their reply brief, petitioners direct our attention to the recent decision in *In re Marriage of Miller*, 369 Ill.App.3d 46, 307 Ill.Dec. 865, 860 N.E.2d 519 (2006). Petitioners assert that *Miller* provides legal authority for this court to apply substantive due process requirements to the municipal ordinances at issue in this case.

In *Miller*, Harold Miller was obligated to pay plaintiff $82 per *859 week in child support pursuant to a dissolution of marriage. *Miller*, 369 Ill.App.3d at 47, 307 Ill.Dec. 865, 860 N.E.2d 519. Defendant was subsequently served with an income withholding notice pursuant to section 35 of the Income Withholding for Support Act (Act) (750 ILCS 28/35 (West 2004)), which requires an employer to deduct child support payments from an employee's wages upon receipt of a income withholding notice and remit those payments to the State Disbursement Unit, and provides a penalty of $100 for each day that the amount designated in the income withholding notice is not remitted. *Miller*, 369 Ill.App.3d at 47–48, 307 Ill.Dec. 865, 860 N.E.2d 519. Defendant subsequently failed to remit 128 child support payments, and the penalties for defendant's delay equaled $1,172,100. *Miller*, 369 Ill.App.3d at 48, 307 Ill.Dec. 865, 860 N.E.2d 519. The circuit court entered a judgment against defendant for that amount, and defendant appealed, arguing that section 35 of the Act was unconstitutional as applied to the facts of that case and that the total penalty imposed deprived him of due process of law. *Miller*, 369 Ill.App.3d at 48–50, 307 Ill.Dec. 865, 860 N.E.2d 519.

On appeal, this court noted that under the Non–Support Punishment Act, the legislature had authorized a maximum fine of $25,000 for the criminal offense of a spouse's willful failure to pay child support, and then observed that the $1,172,100 penalty imposed against the defendant was approximately 47 times greater than that amount. *Miller*, 369 Ill.App.3d at 51, 307 Ill.Dec. 865, 860 N.E.2d 519. The second division of the First District of this court concluded that this "gross disparity" demonstrated that the penalty imposed was wholly disproportionate to the defendant's offense and obviously unreasonable, and therefore held that section 35 of the Act was unconstitutional as applied to the

facts of that case. *Miller*, 369 Ill.App.3d at 51, 307 Ill.Dec. 865, 860 N.E.2d 519.

While we agree that *Miller* involved the application of substantive due process to a statutory penalty, petitioners ignore that *Miller* involved an "as applied" challenge to a statute and therefore depended heavily upon the facts of that case. The facts in this case, however, are distinguishable from those in *Miller*. Most importantly, the penalty imposed in *Miller*, $1,172,100, is far greater than the aggregate amount of the fines imposed in this case, $135,825. Moreover, *Miller* involved a daily fine for a continuing violation of the Act, whereas in this case, petitioners committed 1,287 violations of six different provision of the Code. Approximately 95% of the fines ***970 **983 imposed were based on petitioners' 1,269 violations of the section 4–232–060(a) of the Code by operating an unlicensed valet parking service. Unlike the penalty provision in *Miller*, the penalty provision for violating section 4–232–060(a) mandates that each day a valet parking service operates without a license constitutes a separate offense, and provides for a *860 penalty between $50 and $500 per offense. See Chicago Municipal Code § 4–232–100 (amended December 9, 1992). Finally, petitioners were fined $100 for each violation of section 4–232–060(a), which is near the minimum of the statutorily permissible range of penalties for that offense. Based on these factual differences, we conclude that *Miller* is distinguishable and does not compel us to hold that the fines imposed in this case are unconstitutional.

For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

Affirmed.

CAHILL and R. GORDON, JJ., concur.

Parallel Citations

373 Ill.App.3d 838, 869 N.E.2d 964

End of Document

EXHIBIT
B

TIMELINE OF EVENTS

1. Feb. 11, 2003: [redacted]'s insurance agent, [redacted], sent a letter to Esposito and [redacted], advising that the policy was cancelled for non-payment of premiums.

2. June 13, 2003: The [redacted] vehicle is parked at an [redacted] location, but not returned.

3. July 2003: DCS opens an inquiry into [redacted] and Esposito, and DCS requests that both provide documents and attend an informal hearing.

4. Aug. 4, 2003: IAD provided official notice of allegations to Esposito, which generally overlapped with the DOAH cases, but also included an allegation that Esposito threatened to file criminal harassment charges against one of the patrons of [redacted]

5. Aug. 6, 2003: Date of informal hearing before DCS at which Esposito and [redacted] were to provide documents requested. Esposito did not attend.

6. Aug. 8, 2003: IAD interviewed Esposito.

7. On or around Aug. 26, 2003: The City opens 11 different cases against [redacted] and Esposito, one case for each [redacted] location, and issues over 30 administrative notices of violation to Esposito and [redacted].

   (a) In eight of those cases, the City charged Esposito and [redacted] with:

      (i) operating a valet parking service without liability insurance coverage and, therefore, without a valid valet parking operator license, from February 10, 2003, to June 30, 2003; and

      (ii) providing false insurance certificates to the City.

   (b) In one case, which related to the location where [redacted] parked his car, the City charged Esposito and [redacted] with:

      (i) operating a valet parking service without liability insurance coverage and, therefore, without a valid valet parking operator license, from February 10, 2003, to June 30, 2003;

      (ii) providing false insurance certificates to the City;

      (iii) engaging in acts of consumer fraud and deception;

      (iv) misrepresenting status of insurance to customers;

      (v) failure to stamp receipts with dates and times as required by City ordinance;

      (vi) failure to attend the DCS informal hearing; and

(vii) failure to return a valet receipt to a parking patron.

(c) The other two cases involved charges against [redacted] only for deceptive practices and illegally parking a particular vehicle.

8. Aug. 28, 2003: DOAH sent Esposito and [redacted] notices of administrative hearings. DOAH sent separate notices to Esposito and [redacted], and enclosed various ANOVs (many of which name Frank Esposito) and the insurance certificates the City believed to be fraudulent.

9. Sep. 10, 2003: IAD provided another notice of allegations to Esposito (identical to the one they provided on August 4, 2003) and immediately interviewed Esposito.

10. Nov. 21, 2003: DOAH held consolidated hearing on all of the cases.

(a) The City put on six witnesses, including [redacted] insurance agent, [redacted] who testified that the documents Esposito submitted to the City were forgeries. [redacted] put on one witness. Esposito did not appear personally and did not testify.

(b) After arguments, DOAH found Esposito and [redacted] liable on all charges. Specifically, the DOAH found

(i) that Esposito knew or should have known that his business was uninsured;

(ii) that the certificates of insurance were altered to deceive the Commissioner and to obtain a license, which was deceptive to the public;

(iii) that Esposito falsely represented to the public that [redacted] was insured;

(iv) that Esposito's misrepresentations obstructed the Commissioner's duty to issue valet parking licenses; that [redacted] was at fault for the $200 parking ticket issued to [redacted];

(v) that [redacted] failed to time-stamp [redacted] valet parking ticket; that Esposito failed to appear at the hearing regarding the [redacted] incident;

(vi) that the [redacted] family was entitled to reimbursement for the damage to their vehicle; and

(vii) that Esposito failed to have insurance, and, thus, a valid valet parking license, from February 10, 2003, to June 30, 2003.

(c) DOAH imposed $116,050 in fines against [redacted] and Esposito.

11. Dec. 24, 2003: Esposito and [redacted] filed petition for review in CCCC. Esposito challenged DOAH's ruling on three grounds: the quality of the record was insufficient and did not support DOAH's conclusions, DOAH's findings of liability, and DOAH's imposition of fines on Esposito and [redacted]

12. Feb. 24, 2004: IAD interviewed a DCS attorney regarding Esposito and his case. The DCS attorney advised IAD of the DOAH finding of liability, the strength of the evidence overall, and the evidence that Esposito submitted fraudulent documents to the City. IAD also learned that Esposito had been fined $116,050.

13. May 20, 2004: IAD interviewed Esposito again. When IAD asked about insurance agent Olsen's testimony regarding fraudulent documents, Esposito responded that he did not attend the hearing.

14. Sep. 16, 2004: IAD Commander Kirby authored report recommending Esposito's separation from CPD for violations of Rules 1, 2, 14, and 20, based on allegations of Esposito's conduct of his valet business (which were the matters before DOAH and CCCC), Esposito's false reports and statements to IAD during two interviews, and Esposito's failure to inform CPD that he was under investigation. Former Superintendent Phillip Cline's notation on this report is that he did not approve the recommendation, and there is a marginal note reading "30 days."

15. Oct. 22, 2004: CCCC disposed of the first issue in Esposito's appeal, and held that the DOAH record was sufficient.

16. Dec. 10, 2004: CCCC upheld DOAH's findings of liability, disposing of the second issue. However, CCCC remanded the last issue, fines, for a new hearing before DOAH.

17. Mar. 17, 2005: DOAH held a hearing on fines, at which no testimony was taken or evidence presented. DOAH ruled that nine of the violations were issued to Esposito personally (and to the corporation, [redacted], and that, based upon Esposito's personal participation in the fraud perpetrated against the City, the fines were joint and several.

18. May 5, 2005: Esposito and [redacted] file petition for review in CCCC on issues the purported cruel and unusual amount of and Esposito's personal liability for fines.

19. Nov. 18, 2005: CCCC rejected the appeal and upheld DOAH's ruling on fines.

20. Dec. 14, 2005: Esposito and [redacted] file a notice in CCCC indicating that they will appeal the CCCC judgment. Esposito's eventual appeal to the Appellate Court of Illinois focused on whether the fine amounts were constitutional and whether Esposito could be personally liable to pay fines imposed on [redacted]. There was no appeal to the Appellate Court on the issue of liability.

21. Aug. 23, 2006: Kirby sent a memo to Cline regarding his non-concurrence with the previous recommendation of separation and suggestion of a 30-day suspension. Kirby recommended proceeding with the 30-day suspension.

22. Aug. 30, 2006: Esposito requested review of the suspension recommendation by Superintendent Cline.

23. Aug. 31, 2006: Esposito sent a memo to Cline in which Esposito responded to the allegations against him.

24. Nov. 3, 2006: Daniel Mahoney, IAD Department Advocate, sent Cline a memo regarding the Esposito case. After reviewing the case and the Esposito To/From, Mahoney recommended a 30-day suspension.

25. May 29, 2007: The Illinois Court of Appeals releases its decision in the case [redacted]. In the opinion, the Appellate Court affirmed the CCCC rulings and spoke approvingly of the DOAH decisions. The opinion provided details of the record before DOAH, CCCC, and the Appellate Court. In particular, the court noted that "[t]his record shows that Esposito personally instigated and actively participated in the fraudulent acts perpetuated upon the City and the general public." *Id.* at 853. The court particularized Esposito's personal conduct: "Esposito's submission of forged insurance certificates to obtain a license" and "Esposito's conduct in fraudulently submitting forged insurance certificates and knowingly operating [redacted] without insurance or a valid license." *Id.* at 857.

26. Aug. 15, 2007: Cline declined to impose a 30-day suspension on Esposito, indicating he did not sustain the allegations.

EXHIBIT

Office of the Superintendent 31-Aug-2006

TO: SUPERINTENDENT PHILLIP J. CLINE
SUPERINTENDENT CHICAGO POLICE
DEPARTMENT

FROM: Detective Frank ESPOSITO#21172
Area Three Detective Division

SUBJECT: Request for Superintendents Review
CR#290379

R/Det is submitting this report to contest the findings by the Internal Affairs Division under CR#290379. R/Det will address each alleged rule violation. R/Det will also submit new evidence pertinent for this review.

Rule#1- Violation of any law or ordinance:

Count#1- In that on 13 Jun 2003 the accused failed to have current and valid insurance for [redacted] in violation of the City of Chicago Municipal Code, Chapter 4 Section 232-070 (b)

Reply-Chapter 4 Section 232-070 (b) of the Chicago Municipal Code states no valet parking operator license, or renewal thereof, shall be issued unless the applicant provides proof to the commissioner that he has obtained liability insurance covering all locations at which he operates or seeks to operate in the minimum amounts of $500,000.00 per occurrence for public liability, $100,000.00 per occurrence for property damage, and $100,000.00 per occurrence for garage keepers' legal liability. The insurance policy shall be for a term at least coextensive with the duration of the license and shall not be subject to cancellation except upon 30 days prior notice to the commissioner. Upon termination or lapse of the licensee's insurance coverage, any license issued to him shall automatically expire.

R/Det would like to state that the proper name for the business R/Det was associated with is [redacted]. The company was incorporated with the State of Illinois in November of 2001. The company retained an attorney that handled all business affairs, and meetings were held annually.

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The insurance company used for [redacted]c. was [redacted] was the agent responsible for R/Det's business account. Since the business started in November 2001, all licenses and insurance were valid until 30 Jun 2002. After 30 Jun 2002, the licenses and insurance had to be renewed until 30 Jun 2003. All valet licenses are renewed from 30 June until 30 June no matter when a business or account is started; this is required by the Department of Consumer affairs. When applications are submitted a certificate of insurance must be included. The certificate of insurance is issued by the insurance company. R/Det along with another employee on different occasions had picked up the certificates of insurance from [redacted] and submitted them with the applications on the same day to Ms. Johnson. In June of 2002, R/Det met with Ms. Johnson and went over the license applications at which time they were approved and the licenses were issued. This procedure of going over the applications is done with all valet companies. The meeting with Ms. Johnson in June of 2002 was for the license period of June 2002, until June 2003. Ms. Johnson never questioned the certificates of insurance or denied any application. Ms. Johnson could have verified any information at any time. R/Det along with Ms. Johnson, in good faith believed [redacted] was insured for the year 2003.

The insurance policy shall before a term at least coextensive with the duration of the license and shall not be subject to cancellation except upon 30 days prior notice to the commissioner. In short that means the commissioner has to be notified within 30 days of any insurance policy being cancelled. Ms. Johnson stated at an Administrative Hearing that the City of Chicago was never notified of the policy being cancelled, nor was R/Det.

Count#2- In that from 10 February 2003, to 30 June 2003, the accused committed acts of consumer fraud and deceptive practices by operating [redacted] in violation of Municipal Code of the City of Chicago as described in Chapter 2, Section24-060 (a) and Chapter 4, Section 276-470 (a)(1).

Reply- R/Det has never committed any acts of consumer fraud or deceptive practice. R/Det in good faith believed [redacted] was properly insured.

Rule#2- Any action or conduct which impedes the Departments efforts to achieve its policy and goals or brings discredit upon the Department.

Count#1- In that on 13 June 2003 the accused failed to have current and valid insurance for [redacted]

Reply- R/Det, in good faith, believed [redacted]. was insured on 13 June 2003, based on the meeting with Ms. Johnson and my insurance agents past handling of the policy premiums.

Count#2- In that from 10 February 2003, to 30 June, the accused committed acts of consumer fraud and deceptive practices by operating [redacted]e in violation of the Municipal Code of Chicago.

Reply- R/Det never committed any acts of consumer fraud or deceptive practices. R/Det in good faith believed [redacted]., was properly insured based on the meeting with Ms. Johnson and my insurance agents past handling of the policy premiums.

Count#3- In that from 13 Jun 2003, to 01 July 2003, the accused failed to provide correct insurance information to [redacted] relative to [redacted].

Reply- When [redacted] first called R/Det on his business number, R/Det gave [redacted] the insurance information required. [redacted] is the person that called R/Det back and informed him that she spoke to [redacted] and was advised the insurance policy was cancelled. This was the first time R/Det became aware of any problems with the insurance policy.

Count#4- In that from 13 Jun 2003 to 01 July 2003 the accused informed [redacted] that harassment charges would be filed against her if she did not cease requesting insurance information for [redacted].

Reply- R/Det did in fact give [redacted] the insurance information. [redacted] then began calling R/Det at work, Area Three Detective Division. R/Det does not know how [redacted] knew R/Det was a police detective or how she found out what R/Det's assignment was. [redacted] continued calling Area Three Detective Division harassing R/Det from 13 June 2003, to 01 July 2003, even after she already had the information she requested. R/Det told [redacted] that he was trying to sort this matter out, and requested she stop calling R/Det at work. [redacted] continued to call Area Three from 13 June 2003 to 01 July 2003, R/Det then gave [redacted] the business attorney's name and number and informed her that she must contact him from now on. [redacted] continued calling R/Det at work. R/Det then had no alternative but to inform [redacted] if she didn't stop harassing him at work a general offense case report documenting her harassment would be made.

Count#5- In that from or about 30 June 2003, the accused submitted false and fraudulent documents to the department of Consumer Services in order to obtain licensing for [redacted].

Reply- R/Det never willingly or knowingly submitted false or fraudulent documents to the Department of Consumer Services. Any document submitted by R/Det for insurance purposes were received from [redacted] the insurance agent. These documents were believed to be current and valid.

Count#6- In that from 06 August 2003, to 21 November 2003, the accused failed to submit a written report that he was under investigation by the City of Chicago's Department of Consumer Services.

Reply- R/Det was not aware he was under investigation by the Department of Consumer Services. After [redacted] made her complaint to the Department Of Consumer Services, [redacted]. was sent a notice to attend an informal hearing, these hearings are common in the valet business and are performed when anyone makes a complaint against a company. At no time was R/Det informed he was under investigation by the Department of Consumer Services. The Administrative Notice of Violations that were issued are tickets payable by fine only, similar to a parking ticket.

Count#7- In that 08 August 2003, the accused made false reports regarding having current and valid insurance for [redacted] and provided [redacted] with requested insurance information.

Reply- R/Det never made false reports. The insurance information given to [redacted] was believed to be current and valid and given in good faith. R/Det at the time believed that [redacted] was in fact insured.

Rule#14- Making a false report, written or oral.

Basis: In that on 08 August 2003, and September 2003, the accused made false reports regarding having current and valid insurance for [redacted] and providing [redacted] with requested insurance information.

Reply- R/Det never made false reports. The insurance information given to [redacted] was believed to be current and valid and given in good faith. R/Det at the time believed that [redacted] was in fact insured.

Rule#20- Failure to submit immediately a written report that any member, including self, is under investigation by any law enforcement agency other that the Chicago Police Department.

Basis: In that from 06 August 2003, to 21 November 2003, the accused failed to submit a written report that he was under investigation by the City of Chicago Department of Consumer Services.

Reply- R/Det was never aware he was under investigation by the Department of Consumer Services. After [redacted] made her complaint to the Department of Consumer Services, [redacted] was sent a notice to attend an informal hearing. These hearings are common in the valet business and are performed when anyone makes a complaint. At no time was R/Det ever informed he was under investigation by the Department of Consumer Services. The Administrative Notice of Violations that was issued is payable by fine only, similar to a parking ticket.

R/Det would like to relate a brief summary of events and introduce new evidence that is pertinent for this review.

On 13 Jun 2003, an automobile owned by [redacted] and her son was allegedly parked with [redacted] at 7 W. Division. [redacted] claims when her son gave an employee of [redacted] a valet ticket for her car the employee could not locate the auto. The police were called and a report was filled out.

The next day R/Det was informed of the situation by the site manager for 7 W. Division. R/Det was also informed that the ticket given by [redacted] son on the night of the incident was out of sequence. The ticket given by [redacted] son was a ticket that would have been used a few days earlier. The site manager tried to explain this to [redacted] son on that evening, once the police arrived no one would listen to the employees of [redacted], and an auto theft case report was made out by the 018th district. The police failed to be objective and realize that a possible scam was being perpetrated.

R/Det then began receiving phone calls from [redacted]. [redacted] first began calling on the Express Valet Inc. business line. [redacted] wanted the insurance information for [redacted].. R/Det gave her the information, the conversation was very polite on both sides. R/Det apologized for the inconvenience, but did inform [redacted] of the situation with the out of sequenced ticket. A day or two later [redacted] called R/Det on the business line and said that the insurance for [redacted] had lapsed in February of 2003. R/Det told [redacted] that he would check on the matter and call her back. R/Det called [redacted] and spoke to [redacted] the insurance agent responsible for [redacted]. During the conversation [redacted] was very distant. [redacted] stated he tried several times to make contact either by phone or mail. R/Det never received a call or letter from [redacted] or from [redacted]. R/Det and [redacted] then started to argue with [redacted] hanging up. R/Det tried to call [redacted] back but he refused to take R/Det's calls.

[redacted], the attorney representing [redacted]. advised R/Det not to speak to anyone about this situation and to forward all calls to his office. When [redacted] called R/Det back on the business line R/Det informed her that per his attorney any information on the matter must go through his office. [redacted] became upset and started yelling and screaming at R/Det. R/Det apologized to [redacted] and told her this was a business matter and that R/Det has to follow the advice of his attorney. [redacted] then kept calling on the business line. R/Det kept informing her to contact the attorney and she continued getting angry and hanging up. [redacted] then started to call R/Det at work, Area Three Detective Division. R/Det at no time ever told [redacted] that he was a Chicago Police Detective nor where his assignment was. [redacted] would call at least once or twice daily. [redacted] kept calling Area Three asking for R/Det, leaving messages and telling desk personnel about the matter with [redacted] kept calling for about two weeks straight. R/Det finally had to inform [redacted] that if she kept harassing R/Det at work he would have no choice but to file a general offense case report for telephone harassment with [redacted] as the offender. The Calls from [redacted] then ceased, and a report wasn't generated.

During the last week of June 2003, or first week of July 2003, it was time for [redacted] to renew the valet licenses. R/Det went to a new insurance company for insurance for [redacted]. R/Det then went to the Department of Consumer Services and sat down with Ms. Johnson. Ms. Johnson looked over the applications and insurance information. Ms. Johnson asked R/Det if he knew about the insurance that expired in February 2003. R/Det told her no, he did not know and then asked Ms. Johnson if she knew of the problem because the City of Chicago is listed as an additional insured. In the event that the policy is to be cancelled the insurance company has an obligation to inform the City of Chicago within 30 days of cancellation. Ms. Johnson stated to R/Det and then later at the Administrative Hearing that the City of Chicago was never informed by [redacted] or by [redacted] that the insurance policy for [redacted] had lapsed. Ms. Johnson then renewed all the valet licenses for [redacted]

In the first few weeks of July 2003, [redacted] received a letter from the Department of Consumer services stating that [redacted] filed a complaint against the company and an informal hearing was going to be scheduled. The letter never stated Frank Esposito was under investigation for any wrong doing associated with [redacted].

During the first weeks of August 2003, a Consumer Services employee went to one of [redacted] accounts, [redacted], and gave one of the employees 33 Administrative Notice of Violations. [redacted] was never able to go to the informal hearing because these violations superseded the hearing.

R/Det was interviewed by the Internal Affairs Division on two occasions, and on both occasions R/Det denied any wrong doing. R/Det also denied knowingly or intentionally violating any City of Chicago ordinance pertaining to [redacted] R/Det was informed however by Internal Affairs that [redacted] vehicle was recovered and two people were arrested. Either person arrested had any friends, family, or acquaintances with any employees of [redacted] car was completely fixed and returned to her.

R/Det never attended or testified at the Administrative hearing on the advice of R/Det's attorney. The result of the hearing was that [redacted] and R/Det were to be fined in excess of one hundred thousand dollars, an absurd amount. This fine has been appealed and as of now is still waiting for the appellate courts decision.

R/Det would like to submit and explain new evidence that R/Det located from the Illinois Department of Financial and Professional Regulations. Attached you will find a packet containing 29 pages. R/Det believes if this document would have been introduced at the beginning of the investigation this ordeal never would have gone the length it has.

Pages 27, 28, 29 contain [redacted] response to my complaint. [redacted] states on paragraph 2 page 27 that November 2000, is when [redacted] first initiated insurance with [redacted] states that the insurance policy was to be in force until November 2001. [redacted] then states that November 2001, until November 2002, is when the next renewal took place. R/Det not only told Olsen but also gave him a copy of the requirements from the Department of Consumer Services that stated the insurance policy for valet companies is to be in force from June to June. R/Det believed that is when the policy dates were to be effective. [redacted] states in paragraphs 4, 5, 6 on page 27 that he and his office tried numerous times to contact R/Det and send a renewal.

R/Det never spoke to [redacted] or received any renewal information. In paragraph 6, 7, 8 on page 27 [redacted] states that his office decided to renew the policy and pay $3,228.00, because [redacted]. was a good customer. [redacted], was only a customer for two years, and on a personal note R/Det has never heard of a company paying a premium... In paragraph 9 on page 28, [redacted] states his company received a call from R/Det and that R/Det told him he was going to pay the down payment and fill out the finance agreement and send it back to his office. That conversation never took place.

In paragraph 13 on page 28 [redacted] states the reason the City of Chicago never knew the policy was cancelled was because the insured was falsifying certificates of insurance and passing them off to the City as if they were from [redacted]. It is [redacted] job to send out cancellation notices to the City of Chicago within 30 days of the insurance expiring. How did he know documents were being falsified, unless he was falsifying them? It is still his responsibility to send out the cancellation.

Olsen also states on paragraph 14 of page 28, that the document on page 10 is the actual document from his office to [redacted]. That document states in the upper right hand corner that it is valid until 24 Oct 2003 that would have covered the time frame when [redacted] car was allegedly stolen. That is the document R/Det would have received and given to the City with my renewal. Also included in the document on page 10 the holder is [redacted]. R/Det does not know what company that is or what building is located at [redacted]. That box is where the additional insured is to be. The additional insured should read The City of Chicago. To the right is the cancellation notice which states: "Should any of the above described policies be cancelled before the expiration date thereof, the issuer will endeavor to mail 30 days written notice to the certificate holder named to the left, shall impose no obligation or liability of any kind upon the insurer, it's agents or representatives".

That document referenced above has major discrepancies in it. The policy dates should be June to June, and the holder should be The City of Chicago with the proper address listed as [redacted] submitted a second certificate of insurance that he states contains falsified information. It would be difficult to tell which is the real document? Both contain inaccurate information. R/Det's question would then be, "Why should Olsen be believed and not R/Det, especially since at anytime these documents could have been verified by Ms. Johnson.

These supposed documents sat in a drawer at the Department of Consumer Services for a year before they were brought to the hearing, anything could have happened to the documents during that time frame. R/Det never viewed these documents until the hearing was over. The Administrative Hearing process does not allow discovery or motions.

Olsen states in paragraph 2 on page 29, that he sent out a letter to [redacted] stating the policy was cancelled, but never sent a registered letter because that isn't their standard practice. R/Det would then ask if it is standard practice for [redacted] to pay $3,288.00 for a lapsed premium.

Olsen states on paragraph 3 on page 29 that the insurance company is not required to notify certificate holders that a policy has been cancelled. On the document that [redacted] said he sent to me it clearly states in the lower right hand corner that within 30 days of cancellation the issuer will receive via the mail, to the holder, a written notification that the policy has been cancelled. [redacted] also stated the reason the City wasn't notified was because R/Det was altering documents, this contradicts his earlier statement. [redacted] also states throughout pages 27, 28, and 29, that R/Det never sent him a renewal application. If you refer to page 23 you will see there is a copy of a garage form application that is alleged to have been filled out and signed by R/Det and [redacted] states R/Det never filled one out... how can it be in this packet? R/Det will attempt to explain it, as R/Det understands it. It is apparent to R/Det that [redacted] or someone in his office filled out the application and signed my name without my consent or knowledge.

The packet should contain additional certificates of insurance for other valet accounts that [redacted] covered. During the course of the year anytime a valet account was added or deleted, [redacted] stated a surcharge was requested by the companies insuring [redacted] and that surcharge had to be paid immediately. R/Det does not see any mention of a surcharge, or a list of additional accounts in the packet of documents.

Not only does it appear that [redacted] was taking payments from [redacted] and not forwarding the payment to the company he is employed by, [redacted] was also charging [redacted] for additional accounts that were not being insured along with surcharges.

The valet business receipts are largely cash. Once monthly R/Det would drop off a cash payment to [redacted] at his office. [redacted] promised to send a receipt for payment, but never did. R/Det never had a problem in the past making payments with cash. Running a business and having a full time job can be demanding at times, that is why you try and hire responsible, trustworthy companies to take care of your business needs.

R/Det believes that because of the slanted news reports and my position as a Detective with the Chicago Police Department this investigation was media driven and not objective.

An incomplete and biased investigation was conducted by the Department of Consumer Services without regard for the truth. It was accepted at face value statements of [redacted] and [redacted] without question and dismissed R/Det's statement as untruthful, without any evidence. This investigation was conducted with malice and pre-judged from the beginning.

The case that has been brought against me is FALSE. I have unjustly suffered the loss of my business, had exorbitant fines levied against me and incurred thousands of dollars in legal fees. At the recommendation of Internal Affairs the Chicago Police Department wants to further the injury and injustice by a suspension that is outrageously severe. Superintendent Cline, I implore you to stop this you are the last hope to rectify this matter and see the truth. Superintendent, based on the above I respectfully request to be exonerated of the allegations administered by the Internal Affairs Division. Thank you for your time and consideration in this matter.

Det. Frank Esposito#21172